State Administration Council

Second Revised

Friday, April 21, 2006
3:30 PM – 5:30 PM
MORRIS HALL (17 HOB)

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Administration Council

Start Date and Time:	Friday, April 21, 2006 03:30 pm
End Date and Time:	Friday, April 21, 2006 05:30 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 755 CS Department of the Lottery by Clarke
HB 911 CS Use of State Facilities as Emergency Shelters by Bullard
HB 995 Agency Inspectors General by Bean
HB 1097 CS Public Records by Vana
HB 1123 CS Government Accountability by Sansom, Rubio, Cannon
HB 1125 CS Public Records by Sansom, Rubio, Cannon
HB 1161 Okeechobee County by Machek
HB 1165 CS Florida Retirement System by Barreiro
HB 1369 CS Public Records and Public Meetings by Evers
HB 1435 Division of Emergency Management of the Department of Community Affairs by Harrell
HB 1447 CS Issuance of Licenses and Development Permits by Reagan
HB 1563 CS Public Records by Kendrick
HB 7121 CS Disaster Preparedness Response and Recovery by Domestic Security Committee
HB 7155 State Financial Matters by Governmental Operations Committee
HB 7185 CS Procurement of Contractual Services by a State Agency by Governmental Operations Committee
HB 7221 Campaign Financing by Ethics & Elections Committee
HB 7223 Review under the Open Government Sunset Review Act regarding Medical Records and Health Records by Governmental Operations Committee

NOTICE FINALIZED on 04/20/2006 16:22 by ELLINOR.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 CS Department of the Lottery
SPONSOR(S): Clarke
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1942

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 1 N	Brown	Williamson
2) Business Regulation Committee	15 Y, 1 N, w/CS	Morris	Liepshutz
3) State Administration Appropriations Committee	(W/D)		
4) State Administration Council		Brown RLB	Bussey JCB
5)			

SUMMARY ANALYSIS

The bill modifies the standard of review for competitive procurement protests arising from the Department of the Lottery. The bill bars an Administrative Law Judge from substituting his or her procurement decision for the agency's procurement decision, and requires instead that the judge consider only whether the agency's final action was "illegal, arbitrary, dishonest, or fraudulent."

The Department of the Lottery suggests that the bill will have an indeterminate but positive fiscal impact, due to savings in legal fees incurred.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill reduces the scope of an Administrative Law Judge's review of bid protests at the Department of Lottery.

Safeguard individual liberty – The bill modifies the legal rights of private parties interacting with the Department of the Lottery.

B. EFFECT OF PROPOSED CHANGES:

Agency Procurement and Protests Generally

Chapter 287, F.S., governs agency[1] procurement of commodities and contractual services. The statute requires fair and open competition among vendors, as indicated in the legislative intent language contained in s. 287.001, F.S. In that section, the Legislature states that a fair and open process is necessary in order to "reduce the appearance and opportunity for favoritism and inspire... public confidence that contracts are awarded equitably and economically."

The Department of Management Services (DMS) is statutorily designated as the central procurement authority for executive agencies. Its responsibilities include: overseeing agency implementation of procurement processes;[2] creating uniform agency procurement rules;[3] implementing the online procurement program;[4] and establishing state term contracts.[5] The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.[6]

Unless otherwise authorized by law, state agencies must award contracts for the purchase of commodities or contractual services in excess of $25,000 by competitive sealed bidding,[7] with some exceptions as provided in s. 287.057(5), F.S.

Bid protests are conducted in accordance with chapter 120, F.S., the Administrative Procedure Act. Specifically, s. 120.57(3), F.S., provides detailed provisions relating to bid protests. The section requires that the public be notified of agency actions regarding protests[8] and that a 72-hour window of opportunity be provided for affected entities to file a notice of intent to protest.[9] Upon receipt of such notice, the agency is typically required to stop the procurement process until the protest is resolved.[10] If the protest is not resolved informally, it must be referred to the Division of Administrative Hearings

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[1] For purposes of Chapter 287, F.S., "agency" means "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."
[2] Sections 287.032 and 287.042, F.S.
[3] Sections 287.032(2) and 287.042(3), (4), and (12), F.S.
[4] Section 287.057(23), F.S.
[5] Sections 287.042(2), 287.056, and 287.1345, F.S.
[6] Section 287.056, F.S.
[7] Section 287.057(1)(a), F.S.
[8] Section 120.57(3)(a), F.S.
[9] Section 120.57(3)(b), F.S.
[10] Section 120.57(3)(c), F.S.

(DOAH) if there are disputed issues of material fact,[11] or to an agency hearing officer if there are no disputes over material facts.[12]

When there are material facts in dispute and the case is referred to DOAH, the Administrative Law Judge serves as the trier of fact.[13] That is, the DOAH judge receives evidence from all parties and makes a determination of the facts. This process is detailed in s. 120.57(1), F.S., entitled "Additional Procedures Applicable to Hearings Involving Disputed Issues of Material Fact." Sections 120.57(1)(j) - (k), F.S., excerpted below, contain detailed requirements regarding the DOAH judge's obligations to determine facts:

> (j) Findings of fact shall be based upon a preponderance of the evidence... and shall be based exclusively on *the evidence of record* and on matters officially recognized.
>
> (k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. *All proceedings conducted pursuant to this subsection shall be de novo.* The agency shall allow each party 15 days in which to submit written exceptions to the recommended order.... (Emphasis added.)

These sections indicate that, in determining disputed issues of fact, it is necessary to receive evidence and review the evidence in a *de novo* proceeding. *De novo* means "Anew; afresh; a second time."[14] A "*de novo* trial" means "trying a matter anew; as if it had not been heard before and as if no decision had been previously rendered."[15] In an administrative law context, a *de novo* review of disputed facts requires the judge to receive and review evidence from both parties and evaluate that evidence, ignoring the agency's previous internal rulings on the disputed fact(s).

Section 120.57(3)(f), F.S., provides that in a competitive-procurement protest, other than a rejection of all bids, the judge must conduct a de novo proceeding to determine whether an agency's action was "clearly erroneous, contrary to competition, arbitrary, or capricious." If the agency's action was to dismiss all bids received (in effect, canceling the bid and awarding no contract), the standard of review is raised to "illegal, arbitrary, dishonest, or fraudulent."

OPPAGA Justification Review

In a February 2002 Justification Review of the Lottery, the Office of Program Policy Analysis and Government Accountability [OPPAGA] found that Lottery bid protest costs were significant and hindered the Lottery's ability to operate efficiently and generate revenue.[16] The OPPAGA review recommended that the Legislature consider adopting a stricter standard of review as a means to reduce Lottery procurement costs. The standard of review recommended by OPPAGA is the current standard used in any bid protest proceeding contesting an intended agency action to reject all bids – whether the Lottery's intended action is "illegal, arbitrary, dishonest, or fraudulent." OPPAGA affirmed this recommendation in a December 2004 update.

Department of Lottery Procurement

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[11] Section 120.57(3)(d)3., F.S.
[12] Section 120.57(3)(d)2., F.S.
[13] Section 120.57(1)(b), F.S.
[14] *Black's Law Dictionary, 6th ed.* (West Publishing, 1990).
[15] *Id.*
[16] *Sale of Lottery Products Program, Department of Lottery,* OPPAGA Justification Review, Report No. 02-11, February 2002

In 1987, the Legislature enacted ch. 87-65, LOF, [codified as chapter 24, F.S.] to implement a voter-approved constitutional amendment[17] allowing the State of Florida to operate a lottery. Section 24.102, F.S., sets forth the legislative intent of the act, including that the Lottery be operated as much as possible in the manner of an entrepreneurial business enterprise.[18] The statute further states that the operation of a lottery is a unique activity for state government and that structures and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery.

For example, the Lottery is granted authority to create its own procurement code if it so desires. Section 24.105(13), F.S., grants the Lottery authority to:

> ...perform any of the functions of the Department of Management Services under chapter 255, chapter 273, chapter 281, chapter 283, or *chapter 287*, or any rules adopted [thereunder]. If the department finds, by rule, that compliance... would impair or impede the effective or efficient operation of the lottery, the department *may adopt rules providing alternative procurement procedures*. Such alternative procedures shall be designed to allow the department to evaluate competing proposals and select the proposal that provides the greatest long-term benefit to the state with respect to the quality of the products or services, dependability and integrity of the vendor, dependability of the vendor's products or services, security, competence, timeliness, and maximization of gross revenues and net proceeds over the life of the contract.

The Lottery's alternative procurement procedure provides for a formal competitive process for the purchase of commodities or contractual services that have a total contract value in excess of $50,000.[19]

State agencies, when conducting their core missions, are granted some leeway in following the Administrative Procedure Act when deemed necessary to protect the public health, safety, or welfare. Similarly, the Lottery, in s. 24.109, F.S., is required to follow the Administrative Procedure Act but is granted certain exceptions deemed necessary for the "preservation of the rights and welfare of the people in order to provide additional funds to benefit the public."

Section 24.109(2), F.S., specifies that the procurement provisions of s. 120.57(3) also apply to the Lottery's contracting process with two exceptions. This statute requires that a *formal written protest* of a Lottery Department action that is subject to protest must be filed within 72 hours after receipt of notice of the agency action; whereas, the timeframe for a formal written protest of other agency's actions is set at 10 days.[20] This statute also allows the Lottery to proceed with a bid, solicitation, or contract award process notwithstanding the filing of a notice of intent to protest. This procedure is permitted when the Secretary of the Lottery sets forth in writing "particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process" in order to avoid a "substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game."[21]

Proposed Changes

This bill amends s. 24.109(2), F.S., to add a third exception to the bid protest provisions of s. 120.57(3), F.S. As amended, s. 24.109(2) modifies the standard of review for protests of procurements undertaken by the Lottery from the standard applicable to all agencies ("clearly erroneous, contrary to

[17] s. 15, Art. X, Florida Constitution
[18] See also ss. 24.105(13) and 24.109, F.S.
[19] See 53ER02-45 Procurement of Commodities and Contractual Services, FAC
[20] Section 24.109(2)(a), F.S.
[21] Section 24.109(2)(b), F.S.

competition, arbitrary, or capricious"), to the higher standard currently applicable in reviews of agency rejection of all bids ("illegal, arbitrary, dishonest, or fraudulent").

Lottery bid decisions will still be subject to protest before an Administrative Law Judge and subject to judicial review by the District Court of Appeal. A *de novo* hearing will still be conducted to determine if the new standard of review has been met, i.e., whether the department's intended action is illegal, arbitrary, dishonest, or fraudulent. The ALJ may consider witness testimony and other evidence in reaching a decision and may recommend reversal of a Lottery decision if the judge finds the agency's proposed action was illegal, arbitrary, dishonest, or fraudulent. The ALJ cannot, however, disregard the Lottery's procurement decision and recommend a contract be awarded to a different vendor.

The Lottery anticipates that applying this higher standard of review will reduce the agency's procurement costs.

C. SECTION DIRECTORY:

Section 1 amends 24.109, F.S., changing the standard of review for Department of Lottery bid protests.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The changed standard of review applicable to procurement protests may reduce legal costs for the Department of the Lottery. According to *OPPAGA Report No. 02-11, Justification Review: Sale of Lottery Products Program, Department of the Lottery*, the Lottery estimates that small procurement protests typically cost $6,000, medium $23,000, and large procurement protests may cost over $100,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The matter of the limitations and challenges of de novo review is unclear even under the current s. 120.57(3), F.S. There are opposing concepts as to what the very concept of a "de novo proceeding" actually means, in the context of a bid protest. One argument suggests that in the agency review process, a "de novo proceeding" is actually a hybrid trial-appellate process by which the court reviews agency actions but does not substitute its own judgment for the agency's. In contrast, other commentary suggests that bid protests are fundamentally "true" de novo proceedings.

De Novo means "review for correctness"

A Division of Administrative Hearings judge has analyzed the de novo problem in *R.N. Expertise v. Miami-Dade School Board, et al.*[22] In that case, the court begins by citing s. 120.57(3)(f), F.S., which spells out the rules for decisions applicable in bid protests. In part, the statute provides:

> *In a competitive-procurement protest, other than a rejection of all bids, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the bid or proposal specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.*

In his analysis, the judge states, "These two sentences defy facile interpretation.... Confusion initially may be engendered by the statute's use of the term "de novo proceeding."[23] Typically, a de novo trial or hearing involves "[t]rying a matter anew; the same as if it had not been heard before and as if no decision had previously been rendered." *Black's Law Dictionary* (5th ed. 1979) (defining "de novo trial").

If the framers of s. 120.57(3), F.S., had intended the term "de novo proceeding" to have its customary legal meaning, it has been suggested that they presumably "would have written something like: the Administrative Law Judge shall conduct a de novo proceeding to determine which of the competing offerors, if any, should be awarded the contract."[24] But instead, the drafters made it clear that the "de novo proceeding" must focus on the agency's "proposed action" and produce a recommended order to uphold or override such action. However, this creates confusion. "[S]uch a review of prior action is not a trial-level duty; it is an appellate function. And moreover, appellate-level proceedings are rarely... de novo proceedings..."[25]

In *State Contracting and Engineering Corp. v. Department of Transportation*,[26] the First District identified this confusion over the term "de novo proceeding" and determined that, as used in the statute, the term "describe[s] a form of intra-agency review... The judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency." The object is not to substitute the court's procurement decision-making

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[22] *R.N. Expertise v. Miami-Dade School Board, et al.*, Case No. 01-2663BID, Feb. 4, 2002
[23] *Id.*
[24] *Id.*
[25] *Id.* Under chapter 120, F.S., the "trial-level duty" actually occurs within the agency, as part of a formal or informal review. Removal to DOAH is generally seen as the appellate procedure. [See generally ss. 120.569 and 120.57, F.S.]
[26] *State Contracting and Engineering Corp. v. Department of Transportation*, 709 So. 2d 607, at 609 (Fla. 1st DCA 1998).

with the agency's procurement decision-making.[27] "Although the hearing was called a de novo proceeding, it merely meant that the aggrieved party was given an evidentiary hearing during which all parties had a full and fair opportunity to develop an evidentiary record for administrative review purposes."[28] As a result, the court reasoned "the de novo proceeding contemplated in Section 120.57(3), F.S., might be envisaged, oxymoronically, as an 'appellate trial,' a hybrid proceeding in which evidence is received, factual disputes are settled, legal conclusions made - and prior agency action is reviewed for correctness."[29]

De Novo means "de novo"

The issue has been discussed, as recently as February 2006, in case law emanating from DOAH:

> Because Administrative Law Judges are the triers of fact charged with resolving disputed issues of material fact based upon the evidence presented at hearing, and because bid protests are fundamentally de novo proceedings, the undersigned is not required to defer to the letting authority in regard to any findings of objective historical fact that might have been made in the run-up to preliminary agency action. It is exclusively the administrative law judge's responsibility, as the trier of fact, to ascertain from the competent, substantial evidence in the record what actually happened in the past or what reality presently exists, as if no findings previously had been made.[30]

Clearly this Administrative Law Judge takes a different view of the matter than the judge in the *R.N. Expertise* case cited frequently above.

Conclusion

Ultimately, it is not entirely clear what the term "de novo proceeding" means, in the current s. 120.57(3), F.S., framework. Irrespective of this confusion at the DOAH level of review, the proposed legislation simply provides that the judge will not have to power to substitute his or her procurement decisions in lieu of the DOL's decisions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Committee on Business Regulation

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[27] As the court in *R.N. Expertise* noted, "[That] does not mean, as the hearing officer apparently thought, that the hearing officer sits as a substitute for the Department and makes a determination whether to award the bid *de novo.* Instead, the hearing officer sits in a review capacity, and must determine whether the bid review criteria ... have been satisfied."

[28] *State Contracting and Engineering Corp. v. Department of Transportation*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

[29] The court continues: "The first district's interpretation of 'de novo proceeding' is sensible and almost certainly implements the legislative intent. After all, if bid protests were de novo proceedings in the usual sense, then administrative law judges might become, de facto, the state's über-purchasing agents; it is doubtful the statute's drafters desired that result. The problem is, once bid protests are conceived to be 'appellate trials,' new questions arise, and chief among them is this: What are the standards of review?" [*R.N. Expertise v. Miami-Dade School Board, et al.,* Case No. 01-2663BID, Feb. 4, 2002.]

[30] *Supply Chain Concepts v. Miami-Dade County School Board and School Food Service Systems, Inc.,* Case No. 05-4571BID, 2006 WL 352220, (Fla. Div. Admin. Hrgs. Feb. 13, 2006).

On April 17, 2006, the Committee on Business Regulation adopted one amendment to the bill and voted the bill favorably with CS. The amendment removes the prohibition on an ALJ conducting a *de novo* review of the intended agency action and replaces it with a requirement that the ALJ cannot disregard the agency's procurement decision unless the agency's actions were found to be illegal, arbitrary, dishonest, or fraudulent.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Department of the Lottery; amending s. 24.109, F.S.; requiring an administrative law judge to conduct certain reviews in a competitive procurement protest and providing guidelines for such review; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section 24.109, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection to read:

24.109 Administrative procedure.--

(2) The provisions of s. 120.57(3) apply to the department's contracting process, except that:

(b) In a competitive procurement protest, including the rejection of all bids, proposals, or replies, the administrative law judge shall not substitute his or her procurement decision for the agency's procurement decision but shall review the

intended agency action only to determine if the agency action is illegal, arbitrary, dishonest, or fraudulent.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 CS Department of Management Services
SPONSOR(S): Bullard
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) State Administration Appropriations Committee	7 Y, 0 N	Dobbs	Belcher
3) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
4) State Administration Council		Wiggins	Bussey
5)			

SUMMARY ANALYSIS

The bill requires the Department of Management Services to include in its annual state facilities inventory report a list of state-owned facilities that have unoccupied space suitable for use as an emergency shelter. The list must be updated annually by May 31 and must be listed by county and municipality.

The Department of Management Services has not reported a fiscal impact for the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates an additional reporting requirement.

Maintain Public Security -The list of potential shelters created by this legislation may allow counties and municipalities to better know what buildings may be used as shelters in an emergency.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Pursuant to the "Capital Facilities Planning and Budgeting Act" in ss. 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.[1] To fully comply with this requirement, DMS produces an annual report, which is available online.[2] Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.[3]

There are several components to the annual inventory. For example, the State Facility Inventory program includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and a record of the ownership of the facilities, square footage, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. DMS also is required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space.[4]

The Department of Community Affairs, Division of Emergency Management ("Division"), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the "State Emergency Management Act" in ss. 252.31-252.60, F.S.[5] The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operation, registration, inventory, power generation capability, information management, and staffing; and provide guidance for sheltering people with

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[1] Section 216.015(3)(b), F.S.

[2] http://fcn.state.f.l.us/dms/dbc/mgt/inventory.html

[3] According to the Executive Summary of the 2005 Inventory Annual Report.

[4] Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or, in a combination of rooms, having a minimum of 400 square feet in each room. [Section 252.385 (4)(b), F.S.]

[5] Section 252.35 (2)(a), F.S.

special needs.[6] The Division has integrated the State Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.[7]

The Division currently manages a program for surveying existing public and private buildings, with written owner agreement, to identify which facilities are appropriately designed and located to serve as shelters.[8] Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.[9]

Proposed Changes

The bill requires DMS to compile a list of state-owned facilities that have unoccupied space which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year.
The bill defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse."

C. SECTION DIRECTORY:

Section 1 amends s. 252.385, F.S., to require DMS to maintain a list of state-owned facilities that have unoccupied space for use as emergency shelters during storms or other catastrophic events.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[6] Section 252.35 (2)(a)2., F.S.
[7] Rule 9G-2.002, F.A.C.
[8] Section 252.385(2), F.S.
[9] Section 252.385(4)(a), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006 the Domestic Security committee adopted the amendment that requires DMS to compile and annually update a list of state-owned facilities that have unoccupied space suitable for use as emergency shelter. The amendment defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross, and defines "unoccupied" as "vacant due to suspended operation or nonuse." The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Domestic Security Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; requiring the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing requirements with respect to such listing; defining terms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or

nursing homes, which are suitable for use as public hurricane evacuation shelters shall be made available at the request of the local emergency management agencies. Such agencies shall coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such facilities as public hurricane evacuation shelters.

(d) The Department of Management Services shall include in the annual state facilities inventory report required under ss. 216.015-216.016 a separate list of state-owned facilities, including, but not limited to, meeting halls, auditoriums, conference centers, and training centers that have unoccupied space suitable for use as an emergency shelter during a storm or other catastrophic event. Facilities must be listed by the county and municipality where the facility is located and must be made available in accordance with paragraph (a). As used in this paragraph, the term "suitable for use as an emergency shelter" means meeting the standards set by the American Red Cross for a hurricane evacuation shelter, and the term "unoccupied" means vacant due to suspended operation or nonuse. The list must be updated by May 31 of each year.

Section 2. This act shall take effect July 1, 2006.

HB 995

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 995 Agency Inspectors General
SPONSOR(S): Bean
TIED BILLS: **IDEN./SIM. BILLS:** SB 1632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) Fiscal Council	17 Y, 1 N	Dobbs	Kelly
3) State Administration Council		Brown	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill amends agency inspector general provisions to create an investigatory challenge process. Entities under investigation by an agency inspector general are granted hearing rights during the investigatory process in order to challenge or rebut findings being made by the inspector general. In addition, the target of the investigation is entitled to present a report which must be attached to the inspector general's report.

The bill will have an indeterminate fiscal impact due to administrative costs of holding impartial hearings for entities wishing to challenge or rebut inspector general findings.

The bill provides an effective date of October 1, 2006 for section 1 except for paragraph 20.055(6)(b), F.S.. Section 1 for paragraph 20.055(6)(b), F.S., becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates an additional hearing process in the investigatory processes of agency inspectors general.

Safeguard individual liberty – The bill provides a hearing process for individuals under investigation by an agency.

B. EFFECT OF PROPOSED CHANGES:

Agency Inspectors General

Current law establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.[1] Each inspector general, in carrying out his or her auditing duties and responsibilities, must review and evaluate internal controls necessary to ensure the fiscal accountability of the agency; conduct financial, compliance, electronic data processing, and performance audits of the agency; and prepare audit reports of his or her findings.[2] In carrying out his or her investigative duties and responsibilities, the inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.[3] Agency investigations may involve processes and procedures of an agency, or may involve the actions of specific employees, vendors, or other individuals or entities.

Inspector General Working Materials

Audit workpapers and reports of the inspector general are public records less any confidential and exempt information.[4] However, when a complaint has been received by the inspector general, the name or identity of the individual filing the complaint must not be disclosed without the individual's written consent, unless disclosure is unavoidable during the course of an audit or investigation.[5]

Agency Hearings

The Florida Administrative Procedure Act (APA)[6] creates rights for administrative hearings for entities substantially affected by final agency actions. "Agency action" means "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request [of a petition to initiate rulemaking]."[7]

Section 120.62, F.S., "Agency Investigations," provides that every person responding to an agency request or demand for written information or an oral statement is entitled to a transcript or recording of such oral statement at no more than cost. The section also provides that any person compelled to appear, or who appears voluntarily, before an agency is entitled to legal counsel or other qualified representatives.

Proposed Changes

The bill amends s. 20.055, F.S., to allow hearings challenging an inspector general's findings. Specifically, the bill requires each agency to:

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[1] Section 20.055(2), F.S.
[2] Section 20.055(5), F.S.
[3] Section 20.055(6), F.S.
[4] Section 20.055(5)(b), F.S.
[5] *Id.*
[6] Codified in Chapter 120, F.S.
[7] Section 120.52(2), F.S.

> Provide a meaningful opportunity, including the right to an impartial hearing, to challenge findings... contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public.... "

The challenger's response must be attached to the inspector general's final report, and delivered to any party requesting such report.

The bill also directs the Chief Inspector General in the Executive Office of the Governor[8] to develop procedures "by which all inspectors general will fully implement" this requirement. The initial procedures must be completed within 120 days after the effective date of the law, but no later than September 30, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 20.055, F.S., to create a right to hearing for individuals under investigation by an agency inspector general.

Section 2 provides an effective date of upon becoming a law, except for the procedures to be developed by the Executive Office of the Governor, which take effect on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The cost of this change will depend upon the determination of what constitutes an "impartial hearing".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The counties will be required to send return receipt letters to delinquent filers at a cost of $1.85 per letter.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[8] Created by s. 14.32, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not currently provide any rulemaking authority, but see "Rulemaking concerns" in "Drafting Issues or Other Comments," below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Autonomy

Section 20.055(3)(b), F.S., states that each inspector general "shall not be subject to supervision by any other employee of the state agency." Section 20.055(3)(d), F.S., states that the "agency head shall not prevent or prohibit the inspector general... from initiating, carrying out, or completing any audit or investigation." The purpose of these statutes is to ensure that employees of the agency, including the agency head, may not interfere in the operation of an inspector general investigation. This bill may create an opportunity for any employee, or any other entity related to the agency and subject to possible investigation, to hinder or delay inspector general obligations under s. 20.055, F.S., by repeatedly requesting hearings on each finding made by an inspector general during his or her investigation. Section 20.055(5)(d), F.S., provides a 'draft and response' procedure for audits of operational units inside the agency. It may be advisable to attempt to create a similar procedure for other investigations, rather than the current "impartial hearing" legislation.

Standing and APA Issues

The bill is unclear as to the individuals or entities granted hearing rights to challenge inspector general findings. The bill merely provides that each state agency shall "ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings..." The legislation does not identify to whom this "meaningful opportunity" is granted. The bill also is unclear whether the "impartial hearing" is an administrative hearing under the APA. If so, the matter of who has a right to a hearing may need to be more clearly addressed in order to identify which parties have standing and a right to a hearing under ss. 120.569 or 120.57, F.S. If the report is not a final agency action, it is unclear what type of "impartial hearing" is required by this legislation, or what manner of uniform rules apply to such hearings (see also "Rulemaking concerns," below).

Public Records concerns

It is not clear, in the bill, to what extent the challenging party is entitled to review documents relating to the investigation that would otherwise be unavailable under the public records exemption for certain audit workpapers and reports.[9] The legislation may need to be amended to address the records access issue in order to clarify the challenger's right to review documents in light of the "impartial hearing" requirement of the bill.

Rulemaking concerns

The bill provides that the Chief Inspector General, part of the Executive Office of the Governor, shall create "specific procedures by which all inspectors general will implement" the hearing process

[9] Section 20.055(5)(b), F.S.

described in the bill. Such procedures may require development through the administrative rulemaking process described in s. 120.54, F.S., in order to be valid assertions of agency action.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to agency inspectors general; amending s. 20.055, F.S.; deleting the requirement that investigations and inquiries by inspectors general be free of perceived impairments to their independence; requiring provision of opportunity to challenge an inspector general's report; requiring development of procedures to ensure compliance with requirements applicable to inspector general investigations; prescribing applicability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.--

(6) (a) In carrying out the investigative duties and responsibilities specified in this section, each inspector general shall initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each state agency shall:

1. ~~(a)~~ Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

2. ~~(b)~~ Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such

inquiries, investigations, or reviews as the inspector general deems appropriate.

3.~~(c)~~ Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

4.~~(d)~~ Conduct investigations and other inquiries free of actual ~~or perceived~~ impairment to the independence of the inspector general or the inspector general's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

5.~~(e)~~ Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189.

6. Ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings, conclusions, and recommendations contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public in a written response to the findings, conclusions, and recommendations of the inspector general's final report, which response must be attached to the inspector general's final report and delivered to any party requesting such report at the same time the report is delivered.

(b) Specific procedures by which all inspectors general will fully implement this subsection shall be developed by the Chief Inspector General in the Executive Office of the Governor. Development of initial procedures must be completed within 120

days after this paragraph becomes a law, but no later than September 30, 2006.

Section 2. This act, except for this section and paragraph 20.055(6)(b), Florida Statutes, created in section 1 which shall take effect upon this act becoming a law, shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1097 CS Public Records
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Williamson
2) Insurance Committee	(W/D)		
3) State Administration Council		Williamson	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill amends the Public Records Act to require each agency head who appoints a designee to act as a custodian of public records to provide notice to the public of such designation. The notice must include the name, title, e-mail address, office telephone number, and office mailing address of the designee. It must be prominently posted in those portions of the agency offices that are accessible to the public. If the agency maintains a website, the notice must be prominently displayed on the home page of that website and must be made available by any employee who responds to telephone calls from the public.

The bill also prohibits denying that a record exists and prohibits misleading anyone as to the existence of a public record.

The bill requires a custodian or designee to respond to requests to inspect or copy records promptly and in good faith. It also requires the availability of a custodian or designee to respond to requests during regular business hours for the office having public records.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.[1] The Florida Supreme Court has noted that chapter 119, F.S., the Public Records Act, was enacted ". . . to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."[2]

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[3] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person[4] has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. . . .

Unless specifically exempted, all agency[5] records are available for public inspection. The term "public record" is broadly defined to mean:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[6]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.[7] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[8]

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[1] Sections 1390, 1391, F.S. (Rev. 1892).
[2] *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).
[3] Article I, s. 24 of the State Constitution.
[4] Section 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
[5] The word "agency" is defined in s. 119.011(2), F.S., to mean "... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(11), F.S.
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[8] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The Public Records Act[9] specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

If a record has been made exempt, the agency must redact the exempt portions of the record prior to releasing the remainder of the record.[10] The records custodian must state the basis for the exemption, in writing if requested.[11] Section 119.011(5), F.S., defines "custodian of public records" to mean ". . . the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee."

Effect of Bill

This bill provides that each agency head who appoints a designee to act as a custodian of public records must provide notice to the public of such designation. The notice must include the name, title, e-mail address, office telephone number, and office mailing address of the designee. The notice must be prominently posted in those portions of the agency offices that are accessible to the public. If the agency maintains a website, the notice must be prominently displayed on the home page of that website and must be made available by any employee who responds to telephone calls from the public.

The bill also prohibits denying that a record exists and prohibits misleading anyone as to the existence of a public record.

The bill requires a custodian or designee to respond to requests to inspect or copy records promptly and in good faith. It also requires the availability of a custodian or designee to respond to requests during regular business hours for the office having public records.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07, F.S., relating to inspection and copying of public records.

Section 2 amends s. 497.140, F.S., conforming a cross-reference.

Section 3 amends s. 627.311, F.S., conforming a cross-reference.

Section 4 amends s. 627.351, F.S., conforming a cross-reference.

Section 5 provides a July 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

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[9] Chapter 119, F.S.
[10] Section 119.07(1)(b), F.S.
[11] Section 119.07(1)(c) and (d), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There could be a fiscal impact on agencies due to the requirement that agencies respond "promptly" instead of in a "reasonable time" as "promptly" appears to be a shorter time frame than "a reasonable time."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Designation of the Custodian

Section 119.011(5), F.S., defines "custodian of public records" to mean ". . . the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee."

While the Public Records Act specifically identifies a "custodian of public records," the courts have concluded that the statutory reference to the custodian does not alter the "duty of disclosure" imposed upon every person who has custody of a public record.[12] For purposes of the act, "custodian" refers to all agency personnel who have it within their power to release or communicate public records.[13] Mere temporary possession of a document does not necessarily mean that the person has custody, however. In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship.[14] Nevertheless, it has been held that only a custodian, not an employee, may assert an applicable statutory exemption.[15]

[12] *Puls v. City of Port St. Lucie*, 678 So.2d 514 (Fla. 4th DCA 1996).
[13] *Mintus v. City of West Palm Beach*, 711 So.2d 1359 (Fla. 5th DCA 1991).
[14] *Ibid.*
[15] *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So.2d 936, 940 (Fla. 2002).

Currently, the Public Records Act permits the defined "custodian of public records" to delegate custodial responsibilities to a designee. No such delegation is provided to other agency employees with custody. This bill would appear to permit such a delegation by those employees with custody of a public record. It is not clear that multiple designations by various persons with custody would provide more clarity for the public regarding who should respond to their request to inspect or copy a public record.

Other Comments: Response to a Public Records Request

The Public Records Act does not contain a specific period in which an agency must respond to a request to inspect or copy a record. The Florida Supreme Court has established that the only permissible delay is the "limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."[16] Unreasonable or excessive delays in producing public records can constitute an unlawful refusal to provide access.[17] The bill requires agencies to respond to requests "promptly and in good faith." The bill does not define "promptly," thus, the common meaning of the term would apply. The American Heritage Dictionary[18] defines "promptly" to mean "1. On time; punctual. 2. Done without delay." As such, the standard provided in the bill appears to reduce the amount of time an agency has to respond to a public records request.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Required the agency to provide public notice when the agency head appoints a designee to serve as the custodian of public records;
- Provided that a person who is not a custodian or appointed designee may not deny the existence of a public record nor mislead anyone as to the existence of a public record; and
- Required a custodian or his or her designee to respond to requests to inspect and copy public records during regular business hours for the office having public records.

[16] *Tribune Company v. Cannella*, 458 So.2d 1075, 1078 (Fla. 1984), appeal dismissed sub nom., *DePerte v. Tribune Company*, 105 S.Ct 2315 (1985).
[17] *Town of Manalapan v. Rechler*, 674 So.2d 789, 790 (Fla. 4th DCA 1996), review denied, 684 So.2d 1353 (Fla. 1996).
[18] Second College Edition, Houghton Mifflin Company (1982, 1985).

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; requiring an agency head who appoints a designee to act as a custodian of public records to provide notice to the public of such designation; providing notice requirements; prohibiting a person who is not a custodian of public records or a designee from denying the existence of a record or misleading anyone as to the existence of a record; requiring custodians of public records and their designees to respond to requests to inspect and copy public records promptly and in good faith; amending ss. 497.140, 627.311, and 627.351, F.S.; correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 119.07, Florida Statutes, is amended to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.--

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) Each agency head who appoints a designee to act as a custodian of public records shall provide notice to the public of such designation. Such notice shall contain the name and title of the designee and the designee's e-mail address, office telephone number, and office mailing address. At a minimum, the notice shall be prominently posted in those portions of agency offices that are accessible to the public and, if the agency maintains an agency website, the notice shall be prominently displayed on the home page of such website and shall be made available by any employee who responds to telephone calls from the public. A person who is not a custodian of public records or appointed as a designee may not deny the existence of a public record nor mislead anyone as to the existence of a public record.

(c) A custodian of public records and his or her designee must respond to requests to inspect or copy records promptly and in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees whether such a record exists and, if so, the location at which the record can be accessed.

(d) A custodian of public records or his or her designee shall be available to respond to requests to inspect and copy public records during the regular business hours of the office at which public records are maintained.

(e) ~~(b)~~ A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(f) ~~(c)~~ If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

(g) ~~(d)~~ If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

(h) ~~(e)~~ In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in

question to be immediately produced for inspection or copying as requested by the person seeking such access.

(i) ~~(f)~~ Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(j) ~~(g)~~ The absence of a civil action instituted for the purpose stated in paragraph (h) ~~(e)~~ does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

Section 2. Subsection (5) of section 497.140, Florida Statutes, is amended to read:

497.140 Fees.--

(5) The department shall charge a fee not to exceed $25 for the certification of a public record. The fee shall be determined by rule of the department. The department shall

assess a fee for duplication of a public record as provided in s. 119.07(1)(a) and (e) ~~(b)~~.

Section 3. Paragraph (b) of subsection (4) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.--

(4) The Florida Automobile Joint Underwriting Association:

(b) Shall keep portions of association meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All closed portions of association meetings shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions of this paragraph and s. 119.07(1) (e)-(g) ~~(b)-(d)~~, the court reporter's notes of any closed meeting shall be retained by the association for a minimum of 5 years. A copy of the transcript, less any confidential and exempt information, of any closed meeting during which confidential and exempt claims files are discussed shall become public as to individual claims files after settlement of that claim.

Section 4. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.--

(6) CITIZENS PROPERTY INSURANCE CORPORATION.--

(n)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law will be redacted.

When an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under

oath, to maintain the confidentiality of such files. When a file is transferred to an insurer that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff of and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at

any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(e)-(g) ~~(b)-(d)~~, the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 CS Government Accountability
SPONSOR(S): Sansom and others
TIED BILLS: HB 1125 **IDEN./SIM. BILLS:** SB 2460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 2 N, w/CS	Mitchell	Williamson
2) Fiscal Council	16 Y, 2 N, w/CS	Belcher	Kelly
3) State Administration Council		Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill creates the Florida Government Accountability Act. The bill provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies and the Office of Program Policy Analysis and Government Accountability, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for the abolition and continuation of state agencies and advisory committees, creates procedures after termination, requires review and monitoring, provides a savings clause, and provides additional requirements for agency legislative budget requests including a recommended cost-allocation methodology.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides a schedule to abolish state agencies, examining and licensing boards, councils, advisory councils, committees, task forces, coordinating councils, commissions or boards of trustees. This bill creates a legislative committee to review these entities and report its findings and recommendations.

B. EFFECT OF PROPOSED CHANGES:

The Florida Legislature previously abolished boards, committees, commissions, councils, and agencies, as well as regulations of businesses and professions, pursuant to a schedule and subject to legislative review.

Regulatory Reform Act of 1976/Regulatory Sunset Act

In enacting the Regulatory Reform Act of 1976, the Florida Legislature set forth a schedule to repeal provisions of law that regulated professions, occupations, businesses, or industries.[1] Codified as sections 11.61 and 11.6105, Florida Statutes, the Regulatory Reform Act of 1976 established criteria for the Legislature to consider in determining whether to reestablish a program or function and also provided for the appointment of a select joint committee to assist in implementation.

In 1981, the Regulatory Reform Act of 1976 was substantially reworded and changed to the Regulatory Sunset Act.[2] The Regulatory Sunset Act required each appropriate substantive committee to review programs and functions 15 months prior to the date set for repeal and to make a recommendation regarding continuation, modification, or repeal.

The Legislature repealed the Regulatory Sunset Act in 1991.[3]

Sundown Act

Section 11.611, Florida Statutes, was previously the Sundown Act.[4] The Sundown Act, enacted in 1978, originally provided for the 1979 repeal of boards, committees, commissions, and councils which had not held a meeting after January 1, 1975.[5] The Sundown Act also provided for the 1982 repeal of all other boards, committees, commissions, and councils.[6] The Sundown Act required the Legislature to review these boards, committees, councils, and commissions to determine if any should be reestablished for the public interest.[7] The Sundown Act prohibited boards, committees, commissions, and councils from being established for more than six years.[8]

The Sundown Act was substantially reworded in 1982.[9] The revised Sundown Act contained criteria for the Legislature to consider in determining whether to reestablish an advisory body, commission, or

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[1] Ch. 76-318, Laws of Fla.; additional programs and functions added by ch. 77-457, Laws of Fla.
[2] Ch. 81-318, Laws of Fla.
[3] Ch. 91-429, Laws of Fla. § 4 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.
[4] Section 11.6115, Florida Statutes, codified additional provisions related to the Sundown Act.
[5] Ch. 78-323, Laws of Fla.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 82-46, Laws of Fla.

board of trustees. The revised Sundown Act also set forth a revised schedule for abolishment and review.

The Legislature repealed the Sundown Act in 1991.[10]

Explanation for the Previous Repeal of the Sunset and Sundown Acts

The bill analysis from the repeal of the Regulatory Sunset and Sundown Acts provides the following explanation for their repeal:

> "This committee [Senate Committee on Governmental Operations] first studied the Regulatory Sunset Act and the Sundown Act in 1988. At that time, the committee was directed to assess the laws and their implementation, and to evaluate their accomplishments. The 1988 report considered the overall costs and benefits of the review process of entities subject to repeal under the Sunset and Sundown laws. As well, the prior report identified high tangible costs associated with Sunset and Sundown reviews. The benefits of the laws, while generally acknowledged by both legislative and executive agency staff, were found to be intangible, and therefore difficult to quantify.
>
> The review of the Sunset and Sundown laws revealed that approximately 240 Sunset reviews have occurred between 1977 and 1991. Since then, an estimated 20 regulatory laws have been repealed, and 50 new ones have been created.
>
> There have been approximately 280 Sundown reviews conducted since 1978. Ninety advisory bodies have been repealed since 1978, and an estimated 150 have been created. Of the 90 advisory bodies that have been repealed, 9 were repealed in 1978 without prior reviews, as the law provided, because they have not met in the 5 years prior to the passage of the Sundown Act.
>
> Staff's review found that Sunset reviews are usually more complicated and time-consuming than Sundown reviews. This is due to the technical nature of many laws which regulate professions and industries.
>
> Based on the 1991 review of these laws, and the data available to measure the costs of the reviews, it was concluded that the costs are high. The review also finds, however, that some benefits of the laws are recognized by legislative and agency staff because the laws serve as one mechanism for oversight of executive branch entities. The benefits, which are intangible, are difficult to quantify, while the costs of implementing the laws are very real, and are thus much easier to measure.
>
> The 1991 interim project further indicates that the initial reviews conducted of Sunset and Sundown entities are generally perceived to be more useful, in terms of the substantive results they yield, than are second and other subsequent reviews. Further, although the results of second and other subsequent reviews are generally less substantive, such subsequent reviews require the same amount of time (i.e., 525 analyst-hours for Sunset reviews and 152 analyst-hours for Sundown reviews) as do first-time Sunset and Sundown reviews. The amount of time required of executive agency staff and of legislators is also the same for second and subsequent reviews, even though the benefits gained from the reviews appear to be far less than are those gained in first-time reviews. The review also found that, in 1987, many second-cycle Sunset and Sundown reviews began. This means that many of the reviews conducted since 1987 have been second or third-time reviews for Sunset and Sundown entities.

[10] Ch. 91-429, Laws of Fla. § 5 (to take effect on the day following the day of adjournment sine die of the 1993 regular session of the Legislature). *See also* ch. 96-318, Laws of Fla., § 33.

The findings of this review also suggest that general oversight by legislative staff of executive agencies and of the statutes which govern them has decreased as staff has been required to perform an increasing number of Sunset and Sundown reviews assigned by law. Since general oversight responsibilities are of a more discretionary nature, reviews which are required by statute necessarily take precedence over projects which are discretionary."[11]

This bill analysis recognizes the value of the review process, particularly the initial review. The bill analysis also specifies the staff effort required to perform the analysis and reviews for sunset and sundown.

Florida Government Accountability Act

HB 1123 creates the Florida Government Accountability Act. The bill recreates chapter 21, Florida Statutes,[12] provides definitions, establishes the Legislative Sunset Advisory Committee, provides the membership and organization of the Legislative Sunset Advisory Committee, creates a schedule to abolish state agencies and advisory committees, requires reports and assistance from agencies, the Auditor General and the Office of Program Policy Analysis and Government Accountability, sets criteria for review, provides responsibilities for the Legislative Sunset Advisory Committee, authorizes subpoenas, provides for abolition and continuation, creates procedures after termination, requires review and monitoring, provides a savings clause, and provides additional requirements for agency legislative budget requests including a recommended cost-allocation methodology.

Definitions

The bill provides definitions for "state agency" and "agency". This definition not only includes departments,[13] but also any other administrative unit of state government scheduled for termination and prior review under the Florida Government Accountability Act.

The bill defines "committee" as the Legislative Sunset Advisory Committee.

The bill defines "advisory committee" as "any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees."[14] Advisory committee also includes "any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government."

Legislative Sunset Advisory Committee: Membership

The bill creates the Legislative Sunset Advisory Committee ("LSAC") with the following composition:

- Five members of the Senate;
- One public member appointed by the President of the Senate;
- Five members of the Florida House of Representatives; and
- One public member appointed by the Speaker of the House of Representatives.

The bill contains several other provisions related to appointment:

(1) Each appointing authority is permitted to designate himself or herself as one of the legislative appointees;

(2) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee; and

[11] Fla. S. Comm. on Gov. Over., SB 28-D (1991) Staff Analysis (Dec. 11, 1991) (on file with comm.).
[12] Chapter 21, Florida Statutes, previously contained provisions related to the State Auditing Department. Most of the provisions were repealed pursuant to chapters 69-82 and 69-106, Laws of Florida.
[13] Fla. Stat. 20.03(2)
[14] The bill references the definitions in sections 20.03(3), (7), (8), (9), (10), or (12), Florida Statutes.

(3) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

Each member serves a term of two years and a public member may not serve more than two consecutive two-year terms. The bill further provides that a member is considered to have served a term only if the member has served more than half a term. The bill prohibits an individual from serving as the public member if he or she is regulated by a state agency that the LSAC will review during the term for which the individual would serve or if he or she is employed by, participates in the management of, or directly or indirectly has more than a 10-percent interest in a business entity or other organization regulated by a state agency the LSAC will review during the term for which the individual would serve. The bill makes it grounds for removal to not meet these eligibility criteria, but not impacting the validity of any action taken by the LSAC if a ground for removal existed.

LSAC: Organization

The bill requires initial appointments to be made no later than November 30, 2006, and subsequent appointments shall be made not later than January 15 of the year following each organization session of the Legislature.

The bill provides that the LSAC will have a chair and vice chair, each from a different chamber, that alternates each year between the Senate and the House. A Senate appointee serves as chair during odd-numbered years and as vice-chair during even-numbered years. A House appointee serves as chair during even-numbered years and as vice-chair during odd-numbered years.

The bill sets a quorum for the LSAC as seven members and requires a recorded vote of seven for a final action or recommendation.

The bill permits each member of the LSAC to be reimbursed for actual and necessary expenses incurred in performing LSAC duties. Reimbursement for legislative members coming from the appointing chamber and reimbursement for public members coming from LSAC funds.

The bill allows each chamber to employ staff to work for the chair and vice chair on matters related to LSAC activities.

Schedule to Abolish State Agencies/Advisory Committees

The bill provides a schedule to abolish certain state agencies and their advisory committees. The bill also provides that the President of the Senate and the Speaker of the House of Representatives may alter the schedule by moving agencies between review years.

2008	2009	2010	2011
Advisory committees for the Fish and Wildlife Conservation Commission	Department of Children and Family Services	Advisory committees for the Florida Community College System	Agency for Health Care Administration
Department of Agriculture and Consumer Services	Department of Community Affairs	Advisory committees for the State University System	Agency for Persons with Disabilities
Department of Citrus, including the Citrus Commission	Department of Management Services	Agency for Workforce Innovation	Department of Elderly Affairs
Department of Environmental Protection	Department of State	Department of Education	Department of Health

2008	2009	2010	2011
Department of Highway Safety and Motor Vehicles		Department of the Lottery	
Water management districts.			

2012	2013	2014	2015
Department of Business and Professional Regulation	Advisory committees for the State Board of Administration	Department of Corrections	Executive Office of the Governor
Department of Transportation	Department of Financial Services, including the Financial Services Commission	Department of Juvenile Justice	Florida Public Service Commission
Department of Veterans' Affairs	Department of Revenue	Department of Law Enforcement	
		Department of Legal Affairs	
		Justice Administrative Commission	
		Parole Commission	

Agency and Advisory Committee Reports and Requests for Assistance

Based on this schedule, the bill requires agencies and their advisory committees to report to the LSAC not later than January 1st of the year preceding abolition of the agency. The agency must address the specified review criteria, provide any other appropriate or requested information, and have all data and information provided in the report validated by the agency's inspector general.

The agency shall report:

(1) A list of agency programs and activities;
(2) 3 years of performance measures for each program and activity;
(3) List and describe the factors for the agency's success and failure in meeting its performance measures;
(4) The promptness and effectiveness with which the agency addresses complaints from individuals;
(5) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;
(6) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses;
(7) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;
(8) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs

administered by the agency can be consolidated with the programs of other state agencies;
(9) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public;
(10) The extent to which the agency has corrected deficiencies and implemented recommendations identified by the Auditor General, the Office of Program Policy Analysis and Government Accountability, legislative interim reports, and federal audits;
(11) The extent to which the agency addresses potential conflicts of interest of its employees;
(12) The extent to which the agency complies with public records and public meeting requirements and timeliness of response to public information requests;
(13) The extent to which alternative delivery options have been investigated;
(14) Recommendations to the Legislature for statutory or budgetary changes to improve operations or reduce costs;
(15) The effect of federal intervention or loss of federal funds if the agency is abolished;
(16) The extent to which the advisory committee is needed and is used; and
(17) Other information deemed necessary by the committee.

The bill allows the LSAC to request the assistance of state agencies and officers. The committee and staff may inspect the records, documents, and files of any state agency.

Review Criteria

The bill requires agencies and advisory committees to address, and the LSAC to consider, seventeen criteria for determining whether a public need exists for the continuation of a state agency or its advisory committees or the performance of the functions of the agency or its advisory committees.

These are the review criteria:
(1) The extent to which the agency complies with accountability measures according to the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the Office of Policy and Budget.
(2) The efficiency with which the agency or advisory committee operates.
(3) An identification of the objectives intended for the agency or advisory committee and the problem or need that the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities.
(4) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public.
(5) The extent to which the advisory committee is needed and is used.
(6) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.
(7) Whether the agency has recommended to the Legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates.
(8) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.
(9) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.
(10) The extent to which the agency has complied with applicable requirements of an agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals; or state law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses.
(11) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section.

(12) The extent to which the agency issues and enforces rules relating to potential conflicts of interest of its employees.
(13) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 287, Florida Statutes, and section 24, Article I of the Florida Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.
(14) The extent to which the agency budget reports are transparent.
(15) The extent to which the agency accurately reports on performance measures to justify spending.
(16) The effect of federal intervention or loss of federal funds if the agency is abolished.
(17) Whether any advisory committee or any other part of the agency exercises its powers and duties independently of the direct supervision of the agency head in violation of section 6, Article IV of the Florida Constitution.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Responsibilities

OPPAGA must conduct a comprehensive program evaluation and justification review of each agency and advisory committees under review for abolition. OPPAGA also must review the information provided by the agency and any other information deemed necessary by the committee. By October 31st of the year in which the agency submitted its report, OPPAGA must provide its own report to the LSAC including recommendations.

LSAC Responsibilities

The bill creates several responsibilities for the LSAC which must be completed by March 1st of each year.

Review. The LSAC is required to review the agency and OPPAGA reports.

Consultation. The LSAC must consult with the Legislative Budget Commission, the Planning and Budgeting Office in the Executive Office of the Governor, the Auditor General, and the Chief Financial Officer, or their successors, on the application of these criteria to the agencies and its advisory committees.

Public Hearings. The LSAC must complete all public hearings concerning the application of these criteria to the agency and its advisory committees. The scope of the public hearings is not limited to this criteria

Report. The LSAC must report its specific findings regarding these criteria, make recommendations, and provide other information necessary for a complete evaluation of each agency and its advisory committees.

Recommendations. The LSAC must make three types of recommendations:
(1) on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;
(2) on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review;
(3) on appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended; and
(4) on legislation necessary to carry out the LSAC's recommendations.

In addition, the LSAC may recommend exempting certain agencies from the requirements relating to staff reports, hearings, and evaluations in the year prior to the scheduled abolition.

Subpoena Powers

The bill allows the President of the Senate or the Speaker of the House of Representatives to issue subpoenas, which may be served on a witness at any place in the state, to compel the attendance of witnesses and the production of books, records, papers, and other objects necessary or proper for the purposes of the LSAC proceedings. The bill allows the LSAC to request the issuance of a subpoena.

The bill requires testimony taken under subpoena to be reduced to writing and given under oath subject to the penalties of perjury.

The bill provides that a witness who attends a LSAC proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

Abolition and Continuation

An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law. A state agency and its advisory committees may be continued by the Legislature for a period not to exceed eight years. The Legislature may address only one state agency and its advisory committees and functions in a bill, unless more than one agency, advisory committee, or function is to be consolidated.

The bill specifically authorizes the Legislature to abolish a state agency or advisory committee on a date earlier than that scheduled in this chapter or to consider any other legislation related to a state agency or advisory committee which is scheduled to be abolished.

Procedure after Termination

The bill contains provisions related to concluding business, remaining funds, property, and indebtedness.

Concluding Agency Business. Any state agency that is abolished may continue in existence until July 1 of the following year in order to conclude its business. Abolishment does not reduce or otherwise limit the powers and authority of the state agency during the concluding year unless the law provides otherwise. The terminated agency must cease all activities at the expiration of the one-year period and all rules that have been adopted expire, unless otherwise provided by law.

Funds. The bill provides that any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on July 1 of the year following abolishment. Unless otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment is transferred to the General Revenue Fund and any part of law dedicating the money to a specific fund of an abolished agency becomes void on July 1 of the year immediately following abolishment.

Property. Property and records in the custody of an abolished state agency or advisory committee on July 1 of the year immediately following abolishment shall be transferred to the Department of Management Services, unless otherwise provided by law.

Indebtedness. The bill recognizes the Legislature's continuing obligation to pay bonded indebtedness and all other obligations incurred by a state agency abolished under this chapter. The bill provides that the Florida Government Accountability Act does not impair or impede the payment of bonded indebtedness and other obligations. The bill specifically declares the outstanding bonded indebtedness or other outstanding obligations of an abolished state agency valid and enforceable in accordance with their terms and subject to all applicable terms and

conditions. The bill requires the Department of Management Services, unless otherwise provided by law, to continue to carry out all covenants contained in the bonds and in all other obligations. The bill requires the designated state agency to provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and to provide payment from the sources of payment of all other obligations until the bonds and interest on the bonds are paid in full and all other obligations are performed and paid in full. If provided, all funds established by laws or proceedings and bonds or other obligations shall remain with the Chief Financial Officer or the previously designated trustee. If the proceedings do not provide that the funds remain with the Chief Financial Officer or the previously designated trustee, the funds shall be transferred to the designated state agency.

LSAC Review and Monitoring

The bill requires the President of the Senate and the Speaker of the House of Representatives to forward all bills that create new state agencies or advisory committees to the LSAC for review and for written comments addressing:

(1) Whether the proposed regulatory and other functions of the state agency or advisory committee could be administered by one or more existing state agencies or advisory committees;

(2) Whether the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) Whether the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) Whether the bill provides for adequate protection against conflicts of interest within the state agency or advisory committee.

The bill also requires LSAC staff to monitor legislation that affects agencies and advisory committees which have undergone review. At the close of each legislative session, the LSAC staff are required to present a report to the committee on the adoption of committee recommendations by the legislature. LSAC staff also are required to periodically report to the members of the LSAC on proposed changes that would modify prior recommendations of the LSAC.

Savings Clause

The bill contains a savings clause which provides that abolition of a state agency does not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition, except as otherwise expressly provided by law.

Agency Legislative Budget Requests

The bill modifies the agency legislative budget request instructions to require agencies to:

(1) Identify the associated activities contributing to each performance measure;
(2) Include the standards for each activity for each performance measure; and
(3) Include in the cost-benefit and business case analyses for each request to outsource or privatize, an assessment of the impact on each affected activity.

By December 31, 2006, a recommendation will be provided to the governor and the legislature by a workgroup established to develop a cost-allocation methodology for agencies to use in the computation of activity and unit costs. The workgroup will be comprised of staff from the Executive Office of the

Governor, OPPAGA, the Auditor General, the Department of Financial Services, and legislative appropriations committees. The cost-allocation methodology developed must be based on the standards and guidelines set forth in the Federal Office of Management and Budget Circular A-87.[15]

C. SECTION DIRECTORY:

Section 1: Creates chapter 21, Florida Statutes, the Florida Government Accountability Act, the Legislative Sunset Advisory Committee, and related sunset provisions for state agencies and advisory committees.

Section 2: Modifies the requirements for agency legislative budget requests.

Section 3: Creates a workgroup to develop a cost-allocation methodology for use by agencies in computing activity and unit costs.

Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have an impact on local government revenues.

2. Expenditures:

   This bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

If a state agency or advisory committee is abolished, the state may realize some cost savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

[15] Office of Management and Budget Circular A-87 is available at http://www.whitehouse.gov/OMB/circulars/a087/a87_2004.pdf (last visited Apr. 20, 2006).

2. Other:

Advisory Committees of Constitutional Officers, Agencies, or Entities

There may be a constitutional conflict to the extent that this bill abolishes or attempts to abolish advisory committees created under the authority of a constitutional officer, agency, or entity rather than those authorized by statute, which the Legislature has the discretion to abolish.

Previous Constitutional Attacks

The authority of the Legislature to implement a similar provision related to abolishing regulatory programs was upheld after the court dismissed a challenge to the constitutionality of the Regulatory Reform Act of 1976.[16]

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Placement in Chapter 21, Florida Statutes

Chapter 11, Florida Statutes, provides for legislative organization, procedures, and staffing. The sponsor may wish to place the Florida Government Accountability Act in chapter 11, Florida Statutes, rather than recreating chapter 21, Florida Statutes.

Drafting Issue: Duplicative Sections

The bill currently has two sections (21.019 and 21.0126) related to the monitoring of recommendations.

Drafting Issue: Definition of "Advisory Committee"

There appear to be inconsistencies in the definition of advisory committee. For example, the definition of advisory committee contains a cross reference commissions as defined section 20.03(10), but also refers to "any group, by whatever name, created to provide advice or recommendations;" commissions independently exercise quasi-judicial or quasi-legislative authority and do not simply provide advice or recommendations.

Drafting Issue: Altering the Schedule

The sponsor may wish to further detail the manner in which the President of the Senate and the Speaker of the House may alter the statutory schedule for abolishing agencies. Such a provision may run contrary to the purpose for providing the schedule in statute. It might also disadvantage an agency which suddenly finds itself being reviewed as there are no limits on when such a transfer may be made.

Drafting Issue: Recommending Exemptions

The sponsor may wish to further detail the recipient of the LSAC's recommendation to exempt certain agencies from the requirements related to staff reports, hearings, and evaluations.

[16] *Alterman Transp. Lines, Inc. v. State*, 405 So.2d 456 (Fla. 1st DCA 1981).

Drafting Issue: No Implementation without Recommendation

The provision which requires a recommendation by the LSAC before a bill creating an agency or advisory committee can be implemented may create future conflict if the Legislature passes such a bill without this recommendation. The sponsor may wish to address this situation. One way to do this might be to create a time requirement for the LSAC to make its recommendation.

Drafting Issue: Inspection of Records

The sponsor may wish to strengthen the provision authorizing the LSAC or its designated staff member to inspect the records, documents, and files of any state agency to include access to confidential and exempt records.

Other Comments: Public Members on a Legislative Committee

Public members generally are not appointed to serve on standing legislative committees. Even though this committee is an "advisory" committee, some of its powers appear to be similar to those which are normally reserved to committees composed only of legislators, i.e. the power to keep a bill creating an agency from being implemented. Also, it is not clear whether a public member is prohibited from serving as the chair or vice-chair of a committee. The sponsor may wish to address these issues.

Other Comments: Interaction with Existing Legislative Entities and Structures

The bill does not clearly provide how the LSAC will interact with existing legislative committees and structures such as standing committees, fiscal committees, and the Joint Legislative Auditing Committee. The sponsor may wish to clarify the intended interaction.

Other Comments: Sunset (Regulatory) and Sundown (Structural/Functional) Review

Unlike the Sunset and Sundown Reviews, this bill combines the structural and functional review of an agency and its advisory committees with regulatory review. The sponsor may wish to address this issue if there is a different intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee adopted two amendments. Amendment 1 changed the authority of the Legislative Sunset Advisory Committee to inspect records, documents, and files to more closely mirror the authority of other legislative committees. Amendment 2 changed the process by which the Legislative Sunset Advisory Committee reviews bills that create agencies or advisory committees; depending on when the "creation" bill is filed considered, the amendment requires the Legislative Sunset Advisory Committee to review the bill within three weeks after the regular session of the Legislature convenes or during any special session. The bill was reported favorably with committee substitute.

On April 17, 2006, the Fiscal Council adopted one amendment. The amendment changed the reporting date and requirements for agencies and requires the agency inspector general to validate the information. The amendment required OPPAGA to review the agency report then report and provide recommendations to the committee. The amendment modified the committee review process. The amendment modified the agency legislative budget request requirements. The amendment created a workgroup to develop a cost-allocation methodology for use by the agencies in developing activity and unit costs. The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to government accountability; creating ch. 21, F.S., the Florida Government Accountability Act; providing definitions; creating the Legislative Sunset Advisory Committee; providing for appointment, qualifications, and terms of committee members; providing for vacancies; providing for organization and procedure; authorizing reimbursement for certain expenses; providing for employment of staff; providing a schedule for abolishing state agencies and advisory committees; prescribing required content for agency reports to the committee; providing for review of agencies and their advisory committees by the Office of Program Policy Analysis and Government Accountability; prescribing duties of the committee in reviewing reports, consulting with other legislative entities, holding public hearings, and making a report and recommendations to the legislative leadership with respect to agencies scheduled for abolition; providing for monitoring committee

recommendations; providing review criteria; specifying recommendation options; authorizing exemption from certain review for certain agencies; providing for continuation of state agencies and their advisory committees, by law, under certain circumstances; providing for legislative consideration of proposals with respect to such recommendations; providing procedures after termination; providing for issuance of subpoenas; authorizing reimbursement for travel and per diem for witnesses; providing for assistance of and access to state agencies; providing applicability with respect to certain rights, penalties, liabilities, and proceedings; providing for review of proposed legislation creating a new agency or advisory committee; amending s. 216.023, F.S.; requiring that performance measures and standards and outsourcing cost-benefit and business case analyses identify impacts on agency activities; creating a working group to develop instructions for agencies regarding the computation of activity and unit cost information required to be included in legislative budget requests; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 21, Florida Statutes, consisting of sections 21.001, 21.002, 21.003, 21.004, 21.005, 21.006, 21.007, 21.008, 21.009, 21.0111, 21.012, 21.0125, 21.0126, 21.013,

21.015, 21.016, 21.017, 21.018, 21.019, 21.0211, and 21.022, is created to read:

CHAPTER 21

GOVERNMENT ACCOUNTABILITY

21.001 Short title.--This chapter may be cited as the "Florida Government Accountability Act."

21.002 Definitions.--As used in this chapter:

(1) "State agency" or "agency" means a department as defined in s. 20.03(2) or any other administrative unit of state government scheduled for termination and prior review under this chapter.

(2) "Advisory committee" means any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees as defined in s. 20.03(3), (7), (8), (9), (10), or (12) or any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government.

(3) "Committee" means the Legislative Sunset Advisory Committee.

21.003 Legislative Sunset Advisory Committee.--

(1) The Legislative Sunset Advisory Committee is created and shall consist of five members of the Senate and one public member appointed by the President of the Senate and five members of the House of Representatives and one public member appointed by the Speaker of the House of Representatives. Each appointing

authority may designate himself or herself as one of the legislative appointees.

(2) An individual is not eligible for appointment as a public member if the individual or the individual's spouse is:

(a) Regulated by a state agency that the committee will review during the term for which the individual would serve; or

(b) Employed by, participates in the management of, or directly or indirectly has more than a 10-percent interest in a business entity or other organization regulated by a state agency the committee will review during the term for which the individual would serve.

(3) It is a ground for removal of a public member from the committee if the member does not have the qualifications required by subsection (2) for appointment to the committee at the time of appointment or does not maintain the qualifications while serving on the committee. The validity of the committee's action is not affected by the fact that it was taken when a ground for removal of a public member from the committee existed.

(4) Legislative and public members shall serve terms of 2 years. A public member may not serve more than two consecutive 2-year terms; and, for purposes of this prohibition, a member is considered to have served a term only if the member has served more than half of the term.

(5) Initial appointments shall be made not later than November 30, 2006, and subsequent appointments shall be made not later than January 15 of the year following each organization session of the Legislature.

(6) If a legislative member ceases to be a member of the house from which he or she was appointed, the member vacates his or her membership on the committee.

(7) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(8) The committee shall have a chair and vice chair as presiding officers. The chair and vice chair must alternate each year between the two membership groups appointed by the President of the Senate and the Speaker of the House of Representatives. The chair and vice chair may not be from the same membership group. The President of the Senate shall designate a presiding officer from his appointed membership group who shall preside as chair during the odd-numbered year and as vice chair during the even-numbered year, and the Speaker of the House of Representatives shall designate the other presiding officer from his appointed membership group who shall preside as chair during the even-numbered year and as vice chair during the odd-numbered year.

(9) Seven members of the committee constitute a quorum. A final action or recommendation may not be made unless approved by a recorded vote of a majority of the committee's full membership.

(10) Each member of the committee is entitled to reimbursement for actual and necessary expenses incurred in performing committee duties. Each legislative member is entitled to reimbursement from the appropriate fund of the member's

respective house. Each public member is entitled to reimbursement from funds appropriated for use by the committee.

21.004 Staff.--The Senate and the House of Representatives may each employ staff to work for the chair and vice chair of the committee on matters related to committee activities. The Auditor General and the Office of Program Policy Analysis and Government Accountability shall assist the committee in conducting its review under s. 21.0111.

21.005 Schedule for abolishing state agencies and advisory committees.--The following state agencies, including their advisory committees, or the following advisory committees of agencies are abolished according to the following schedule:

(1) Abolished July 1, 2008:

(a) Advisory committees for the Fish and Wildlife Conservation Commission.

(b) Department of Agriculture and Consumer Services.

(c) Department of Citrus, including the Citrus Commission.

(d) Department of Environmental Protection.

(e) Department of Highway Safety and Motor Vehicles.

(f) Water management districts.

(2) Abolished July 1, 2009:

(a) Department of Children and Family Services.

(b) Department of Community Affairs.

(c) Department of Management Services.

(d) Department of State.

(3) Abolished July 1, 2010:

(a) Advisory committees for the Florida Community College System.

(b) Advisory committees for the State University System.

(c) Agency for Workforce Innovation.

(d) Department of Education.

(e) Department of the Lottery.

(4) Abolished July 1, 2011:

(a) Agency for Health Care Administration.

(b) Agency for Persons with Disabilities.

(c) Department of Elderly Affairs.

(d) Department of Health.

(5) Abolished July 1, 2012:

(a) Department of Business and Professional Regulation.

(b) Department of Transportation.

(c) Department of Veterans' Affairs.

(6) Abolished July 1, 2013:

(a) Advisory committees for the State Board of Administration.

(b) Department of Financial Services, including the Financial Services Commission.

(c) Department of Revenue.

(7) Abolished July 1, 2014:

(a) Department of Corrections.

(b) Department of Juvenile Justice.

(c) Department of Law Enforcement.

(d) Department of Legal Affairs.

(e) Justice Administrative Commission.

(f) Parole Commission.

(8) Abolished July 1, 2015:

(a) Executive Office of the Governor.

(b) Florida Public Service Commission.

The President of the Senate and the Speaker of the House of Representatives may alter this schedule by transferring agencies between review years.

21.006 Agency report to committee.--Not later than January 1 of the year preceding the year in which a state agency and its advisory committees are scheduled to be abolished, the agency shall provide the committee with a report that includes:

(1) A list of all agency programs and activities as defined in s. 216.011.

(2) The performance measures for each program and activity as provided in s. 216.011 and 3 years of data for each measure that provides actual results for the immediately preceding 2 years and projected results for the current fiscal year.

(3) The agency's success in meeting its legislative performance standards for each program and activity and an explanation of factors that have contributed to its success or failure to achieve the legislative standards.

(4) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

(5) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

(6) The extent to which the agency has complied with applicable requirements of:

(a) State and federal provisions relating to equality of employment opportunity and the rights and privacy of individuals.

(b) State law and applicable rules regarding purchasing goals and programs for historically underutilized businesses.

(7) A statement of the objectives intended for each program and activity, the problem or need that the program and activity were intended to address, and the extent to which these objectives have been achieved.

(8) An assessment of the extent to which the jurisdiction of the agency and its programs and activities overlap or duplicate those of other agencies and the extent to which the programs and activities can be consolidated with those of other agencies.

(9) An assessment of less restrictive or alternative methods of providing services for which the agency is responsible that would reduce costs or improve performance while adequately protecting the public.

(10) An assessment of the extent to which the agency has corrected deficiencies and implemented recommendations contained in reports of the Auditor General, the Office of Program Policy Analysis and Government Accountability, legislative interim studies, and federal audit entities.

(11) The extent to which the agency adopts and enforces rules relating to potential conflicts of interest of its employees.

(12) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and 286 and s. 24, Art. I of the State Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.

(13) The extent to which alternative program delivery options, such as privatization, have been considered to reduce costs or improve services to citizens.

(14) Recommendations to the Legislature for statutory or budgetary changes that would improve program operations, reduce costs, or reduce duplication.

(15) The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished.

(16) A list of all advisory committees, including those established in statute and those established by agency initiation; their purpose, activities, membership, and related expenses; the extent to which their purposes have been achieved; and the rationale for continuing or eliminating each advisory committee.

(17) Other information deemed necessary by the committee.

Information and data reported by the agency shall be validated by its inspector general before submission to the committee.

21.007 Legislative review.--Upon receipt of an agency report pursuant to s. 21.006, the Office of Program Policy Analysis and Government Accountability shall conduct a program evaluation and justification review, as defined in s. 11.513, of the agency and its advisory committees. The review shall be

comprehensive in its scope and consider the information provided by the agency report in addition to information deemed necessary by the office and the Legislative Sunset Advisory Committee. The Office of Program Policy Analysis and Government Accountability shall submit its report to the Legislative Sunset Advisory Committee and to the President of the Senate and the Speaker of the House of Representatives by October 31 of the year in which the agency submits its report. The Office of Program Policy Analysis and Government Accountability shall include in its report recommendations for consideration by the Legislative Sunset Advisory Committee.

21.008 Committee duties.--No later than March 1 of the year in which a state agency or its advisory committees are scheduled to be abolished, the committee shall:

(1) Review the information submitted by the agency and the report of the Office of Program Policy Analysis and Government Accountability.

(2) Consult with the Legislative Budget Commission, relevant substantive and appropriations committees of the Senate and the House of Representatives, the Governor's Office of Policy and Budgeting, the Auditor General, and the Chief Financial Officer, or their successors, on the application to the agency and its advisory committees of the criteria provided in s. 21.0111.

(3) Hold public hearings to consider this information as well as other information and testimony that the committee deems necessary.

(4) Present to the President of the Senate, the Speaker of the House of Representatives, and the Governor a report on the agencies and advisory committees scheduled to be abolished that year. In the report, the committee shall include its specific findings and recommendations regarding each of the criteria prescribed by s. 21.0111 and shall also:

(a) Make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(b) Make recommendations on the consolidation, transfer, privatization, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

(c) Recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended.

(d) Include drafts of legislation necessary to carry out the committee's recommendations.

21.009 Monitoring of recommendations.--During each legislative session, staff of the committee shall monitor legislation affecting agencies that have undergone review under this chapter and shall periodically report to members of the committee on proposed changes that would modify recommendations of the committee. Staff shall also present a report to the committee at the close of each legislative session on the adoption of committee recommendations by the Legislature.

21.0111 Criteria for review.--The committee shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) Agency compliance with the accountability measures, as analyzed by the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the Office of Policy and Budget within the Executive Office of the Governor, pursuant to s. 216.023(4) and (5).

(2) The efficiency with which the agency or advisory committee operates.

(3) The objectives of the agency or advisory committee and the problem or need that the agency or advisory committee is intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities.

(4) An assessment of less restrictive or alternative methods of providing any regulatory function for which the agency is responsible while adequately protecting the public.

(5) The extent to which the advisory committee is needed and is used.

(6) The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

(7) Whether the agency has recommended to the Legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates.

(8) The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

(9) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

(10) The extent to which the agency has complied with applicable requirements of:

(a) An agency of the Federal Government or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

(b) State law and applicable rules of any state agency regarding purchasing goals and programs for historically underutilized businesses.

(11) The extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section.

(12) The extent to which the agency adopts and enforces rules relating to potential conflicts of interest of its employees.

(13) The extent to which the agency complies with public records and public meetings requirements under chapters 119 and

287 and s. 24, Art. I of the State Constitution and follows records management practices that enable the agency to respond efficiently to requests for public information.

(14) The extent to which the agency complies with requirements for maintaining transparency in its budget reports.

(15) The extent to which the agency accurately reports performance measures used to justify state spending on each of its activities, services, and programs.

(16) The effect of federal intervention or loss of federal funds if the agency is abolished.

(17) Whether any advisory committee or any other part of the agency exercises its powers and duties independently of the direct supervision of the agency head in violation of s. 6, Art. IV of the State Constitution.

21.012 Recommendations.--In its report on a state agency, the committee shall:

(1) Make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

(2) Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

(3) Recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended under subsection (1) or subsection (2).

(4) Include drafts of legislation necessary to carry out the committee's recommendations under subsection (1) or subsection (2).

21.0125 Review of certain agencies.--In the year preceding the date scheduled for the abolition of a state agency and its advisory committees under this chapter, the committee may recommend exempting certain agencies from the requirements of this chapter relating to staff reports, hearings, and evaluations.

21.0126 Monitoring of recommendations.--During each legislative session, the staff of the committee shall monitor legislation affecting agencies that have undergone review under this chapter and shall periodically report to the members of the committee on proposed changes that would modify prior recommendations of the committee.

21.013 Abolition of advisory committees.--An advisory committee is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

21.015 Continuation by law.--

(1) During the regular session immediately before a state agency and its advisory committees are scheduled to be abolished, the Legislature, by law, may continue the agency or any of its advisory committees for a period not to exceed 8 years.

(2) This chapter does not prohibit the Legislature from:

(a) Abolishing a state agency or advisory committee on a date earlier than that scheduled in this chapter; or

(b) Considering any other legislation relative to a state agency or advisory committee scheduled to be abolished under this chapter.

21.016 Legislative consideration.--

(1) Except as provided by subsection (2), the Legislature may not consider in one bill the continuation, transfer, or modification of more than one state agency and the agency's functions and advisory committees.

(2) If more than one agency, advisory committee, or function is to be consolidated, the Legislature may consider in one bill only the agencies or advisory committees to be consolidated.

(3) A bill to continue a state agency, to transfer its functions, or to consolidate it with another agency must mention the affected agencies in the title of the bill.

21.017 Procedure after termination.--

(1) A state agency that is abolished may continue in existence until July 1 of the following year to conclude its business. Unless the law provides otherwise, abolition does not reduce or otherwise limit the powers and authority of the state agency during the concluding year. A state agency is terminated and shall cease all activities at the expiration of the 1-year period. Unless the law provides otherwise, all rules that have been adopted by the state agency expire at the expiration of the 1-year period.

(2) Any unobligated and unexpended appropriations of an abolished agency or advisory committee lapse on July 1 of the year following abolition.

(3) Except as provided by subsection (5) or as otherwise provided by law, all money in a dedicated fund of an abolished state agency or advisory committee on July 1 of the year immediately following abolition is transferred to the General Revenue Fund. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on July 1 of the year immediately following abolition.

(4) If not otherwise provided by law, property and records in the custody of an abolished state agency or advisory committee on July 1 of the year immediately following abolition shall be transferred to the Department of Management Services.

(5) The Legislature recognizes the state's continuing obligation to pay bonded indebtedness and all other obligations, including lease, contract, and other written obligations, incurred by a state agency abolished under this chapter, and this chapter does not impair or impede the payment of bonded indebtedness and all other obligations, including lease, contract, and other written obligations, in accordance with their terms. If an abolished state agency has outstanding bonded indebtedness or other outstanding obligations, including lease, contract, and other written obligations, the bonds and all other obligations, including lease, contract, and other written obligations, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract, and other written obligations. If not otherwise provided by law, the Department of Management Services shall continue to carry out all covenants

contained in the bonds and in all other obligations, including lease, contract, and other written obligations, and the proceedings authorizing them, including the issuance of bonds, and the performance of all other obligations, including lease, contract, and other written obligations, to complete the construction of projects or the performance of other obligations, including lease, contract, and other written obligations. The designated state agency shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract, and other written obligations, in accordance with their terms, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other obligations, including lease, contract, and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract, and other written obligations, shall remain with the Chief Financial Officer or the previously designated trustees. If the proceedings do not provide that the funds remain with the Chief Financial Officer or the previously designated trustees, the funds shall be transferred to the designated state agency.

21.018 Subpoena power.--

(1) The President of the Senate or the Speaker of the House of Representatives may issue process to compel the attendance of witnesses and the production of books, records,

papers, and other objects necessary or proper for the purposes of the committee proceedings. The process may be served on a witness at any place in this state.

(2) If a majority of the committee directs the issuance of a subpoena, the chair shall request that the President of the Senate or the Speaker of the House of Representatives issue the subpoena.

(3) Testimony taken under subpoena must be reduced to writing and given under oath subject to the penalties of perjury.

(4) A witness who attends a committee proceeding under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state.

21.019 Assistance of and access to state agencies.--

(1) The committee may request the assistance of state agencies and officers. When assistance is requested, a state agency or officer shall assist the committee.

(2) In carrying out its functions under this chapter, the committee or its designated staff member may inspect the records, documents, and files of any state agency.

21.0211 Saving provision.--Except as otherwise expressly provided by law, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

21.022 Review of proposed legislation creating a new agency or advisory committee.--

(1) Each bill filed in the Senate or the House of Representatives that would create a new state agency or a new advisory committee to a state agency shall be forwarded by the President of the Senate or the Speaker of the House of Representatives, as applicable, to the committee.

(2) The committee shall review the bill to determine whether:

(a) The proposed regulatory and other functions of the state agency or advisory committee could be administered by one or more existing state agencies or advisory committees;

(b) The form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(c) The bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(d) The bill provides for adequate protection against conflicts of interest within the state agency or advisory committee.

(3) After reviewing the bill, the committee shall forward a written comment concerning the legislation to the sponsor of the bill and to the chair of the substantive legislative committee to which the bill is referred, and implementation may not take place until a recommendation is made.

Section 2. Notwithstanding section 216.351, Florida Statutes, subsection (4) of section 216.023, Florida Statutes, is amended to read:

216.023 Legislative budget requests to be furnished to Legislature by agencies.--

(4)(a) The legislative budget request must contain for each program:

1. The constitutional or statutory authority for a program, a brief purpose statement, and approved program components.

2. Information on expenditures for 3 fiscal years (actual prior-year expenditures, current-year estimated expenditures, and agency budget requested expenditures for the next fiscal year) by appropriation category.

3. Details on trust funds and fees.

4. The total number of positions (authorized, fixed, and requested).

5. An issue narrative describing and justifying changes in amounts and positions requested for current and proposed programs for the next fiscal year.

6. Information resource requests.

7. Legislatively approved output and outcome performance measures and any proposed revisions to measures. Each performance measure must identify the associated activity contributing to the measure from those identified in accordance with paragraph (b).

8. Proposed performance standards for each performance measure and justification for the standards and the sources of data to be used for measurement. Performance standards must include standards for each affected activity and be expressed in terms of the associated unit of activity.

9. Prior-year performance data on approved performance measures and an explanation of deviation from expected

performance. Performance data must be assessed for reliability in accordance with s. 20.055.

10. Proposed performance incentives and disincentives.

11. Supporting information, including applicable cost-benefit analyses, business case analyses, performance contracting procedures, service comparisons, and impacts on performance standards for any request to outsource or privatize agency functions. The cost-benefit and business case analyses must include an assessment of the impact on each affected activity from those identified in accordance with paragraph (b). Performance standards must include standards for each affected activity and be expressed in terms of the associated unit of activity.

12. An evaluation of any major outsourcing and privatization initiatives undertaken during the last 5 fiscal years having aggregate expenditures exceeding $10 million during the term of the contract. The evaluation shall include an assessment of contractor performance, a comparison of anticipated service levels to actual service levels, and a comparison of estimated savings to actual savings achieved. Consolidated reports issued by the Department of Management Services may be used to satisfy this requirement.

(b) It is the intent of the Legislature that total accountability measures, including unit-cost data, serve not only as a budgeting tool but also as a policymaking tool and an accountability tool. Therefore, each state agency and the judicial branch must submit a ~~one-page~~ summary of information for the preceding year in accordance with the legislative budget

instructions. Each ~~one-page~~ summary must provide a one-page overview and must contain:

1. The final budget for the agency and the judicial branch.

2. Total funds from the General Appropriations Act.

3. Adjustments to the General Appropriations Act.

4. The line-item listings of all activities.

5. The number of activity units performed or accomplished.

6. Total expenditures for each activity, including amounts paid to contractors and subordinate entities. Expenditures related to administrative activities not aligned with output measures must consistently be allocated to activities with output measures prior to computing unit costs.

7. The cost per unit for each activity, including the costs allocated to contractors and subordinate entities.

8. The total amount of reversions and pass-through expenditures omitted from unit-cost calculations.

At the regular session immediately following the submission of the agency unit cost summary, the Legislature shall reduce in the General Appropriations Act for the ensuing fiscal year, by an amount equal to at least 10 percent of the allocation for the fiscal year preceding the current fiscal year, the funding of each state agency that fails to submit the report required under this paragraph.

Section 3. To assist in the development of legislative budget request instructions for agencies regarding the computation of activity and unit cost information required to be

included in legislative budget requests under s. 216.023(4)(b), Florida Statutes, a working group consisting of representatives from the Executive Office of the Governor, the Office of Program Policy Analysis and Government Accountability, the Auditor General, the Department of Financial Services, and legislative appropriations committees shall be created, effective July 1, 2006, to develop a cost-allocation methodology for agencies to use in the computation of activity and unit costs. The cost-allocation methodology shall be based on the standards and guidelines identified in the Federal Office of Management and Budget Circular A-87. In addition, this working group shall produce procedures to ensure that the recommended cost-allocation methodology produces auditable activity and unit cost information that can be used to compare the performance of each reported activity over time and of agencies and private entities that perform similar activities. The working group shall submit its recommendations, including the associated implementation and operating costs, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2006.

Section 4. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1123**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Sansom offered the following:

Amendment (with directory amendment)

Remove lines 419-424

========== D I R E C T O R Y A M E N D M E N T ==========

Remove line 50 and insert:

21.008, 21.009, 21.0111, 21.012, 21.0125, 21.013,

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1125 CS Public Records
SPONSOR(S): Sansom and others
TIED BILLS: HB 1123 **IDEN./SIM. BILLS:** SB 2462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 2 N, w/CS	Mitchell	Williamson
2) State Administration Council		Mitchell	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a public records exemption for the Legislative Sunset Advisory Committee. The exemption applies to the agency report provided to the Legislative Sunset Advisory Committee and to other records, including working papers and drafts, which are prepared or maintained in order to present the report of the Legislative Sunset Advisory Committee. These records are not exempt six months after the report is presented. The bill also contains a provision, which is similar to other public records exemptions of the Legislature, which makes these records public if they are released to persons other than the specified members and employees of the Legislature.

The bill mirrors an existing provision to allow a record, which is held by another entity and is confidential or exempt by law, to remain confidential or exempt if the Legislative Sunset Committee receives the document in connection with the performance of its duties.

The bill provides the required five-year-review for new public records exemptions.

The bill contains a public necessity statement.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on local governments. The bill does not appear to have an impact on state government revenues, but may have a minimal fiscal impact on the expenditures of state government for implementation.

This bill requires passage by a two-thirds vote of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.[1]

Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law.[2] This general law must "state with specificity the public necessity justifying the exemption" and be "no broader than necessary to accomplish the stated purpose of the law."[3] The Legislature has created numerous public records exemptions.

Relevant Public Records Exemptions: Legislature

Section 11.0431, Florida Statutes, exempts the following public records[4] from inspection and copying:

- *Records or information held by the legislative branch of government that would be confidential or exempt if held by an agency[5] or any other unit of government;*[6]
- A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint;[7]

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[1] Fla. Stat. § 119.07(1)(a) (2005).
[2] Fla. Const. art. 1, § 24.
[3] *Id.*
[4] Fla. Stat § 11.0431(4) (2005) (defines public record as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.").
[5] Fla. Stat. § 119.011 (2005).
[6] Fla. Stat. § 11.0431(1)(a) (2005).
[7] Fla. Stat. § 11.0431(2)(b) (2005) (exempt until "the complaint is dismissed, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.").

- A legislatively produced draft, or a legislative request for a draft, of a bill, resolution, memorial, legislative rule, or amendment;[8]

- A draft of a bill analysis or fiscal note;[9]

- A draft, request for a draft, amendment, and supporting documents for a reapportionment plan or redistricting plan;[10]

- Records prepared for or used in any executive session of the Senate;[11]

- Portions of records of former legislative investigating committees whose records are sealed or confidential;[12]

- Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics;[13] and

- Portions of correspondence held by the legislative branch which, if disclosed, would reveal: (1) information otherwise exempt from disclosure by law; (2) an individual's medical treatment, history, or condition; or (3) the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.[14]

A New Public Records Exemption for the Legislature

This bill makes two types of records of the Legislative Sunset Advisory Committee exempt from section 119.07(1), Florida Statutes, and section 24(a), article I of the Florida Constitution:

(1) The report that agencies submit to the Legislative Sunset Advisory Committee; and

(2) All records, including working papers and drafts, prepared or maintained by the Legislative Sunset Advisory Committee in order to present the required report.

The public records exemption no longer applies six months after the required report is presented to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The bill also provides that the agency report or other records are subject to public records requirements if provided to any person other than the specified members and employees of the Legislature.[15]

The bill provides that if a record held by another entity is confidential or exempt by law, it remains confidential or exempt if the Legislative Sunset Advisory Committee receives the document in connection with the performance of its duties.

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[8] Fla. Stat. § 11.0431(2)(c) (2005) (provided the draft "is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.").

[9] Fla. Stat. § 11.0431(2)(d) (2005) (until "the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.").

[10] Fla. Stat. § 11.0431(2)(e) (2005).

[11] Fla. Stat. § 11.0431(2)(f) (2005) (until "10 years after the date on which the executive session was held.").

[12] Fla. Stat. § 11.0431(2)(g) (2005) (applies to records "as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.").

[13] Fla. Stat. § 11.0431(2)(h) (2005) (unless "the member requesting the opinion authorizes in writing the release of such information; provided, however, that all advisory opinions must be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.").

[14] Fla. Stat. § 11.0431(2)(i) (2005).

[15] This is similar to the exemption in section 11.0431(1)(c), Florida Statutes.

Public Records Exemption Review: Open Government Sunset Review Act

Section 119.15, Florida Statutes, mandates the review and repeal or reenactment of any exemption from public records requirements in the fifth year after the enactment of a new exemption. Unless the Legislature acts to reenact the newly created exemption, it is repealed on October 2nd of the fifth year. The bill recognizes this required review and provides for repeal on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Records Exemption for Alternative Investments: Public Necessity Statement

This bill provides a public necessity statement to comport with the requirements of article 1, section 24(c) of the Florida Constitution.

Contingent Effective Date

The bill takes effect July 1, 2006 only if HB 1123 or similar legislation is adopted by the Legislature.

C. SECTION DIRECTORY:

Section 1: Creates section 21.0195, Florida Statutes, to create a public records exemption for the Legislative Sunset Advisory Committee.

Section 2: Sets froth the public necessity statement for the public records exemption.

Section 3: Provides an effective date of July 1, 2006, provided HB 1123 or similar legislation is adopted.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

Article 1, section 24(c) of the Florida Constitution contains three requirements for any general law creating an exemption to the constitutional right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf: (1) passed by a two-third votes of each house, (2) state with specificity the public necessity justifying the exemption, and (3) be no broader than necessary to accomplish the stated purpose of the law. As such, the bill requires a two-thirds vote for passage. The adequacy of the public necessity statement and whether the bill is broader than necessary are ultimately matters of judicial interpretation. It should be noted, however, that the exemption for the working papers is broad and does not have a time limitation or provision related to the release to third parties outside of the legislative process as contained in other legislative exemptions.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Placement of Exemption

This bill places this public records exemption in chapter 21, as recreated by HB 1123 (2005). Yet, public records exemptions specific to the Legislature are currently in section 11.0431, Florida Statutes. The sponsor may wish to place this public records exemption in this section or elsewhere in chapter 11, Florida Statutes, which relates to legislative organization, procedures, and staffing.

Duplicative Exemption: Flow of Confidentiality and Exemption

The provision of the bill which keeps the confidential or exempt status of any record with it when used by the Legislative Sunset Advisory Committee is similar to the exemption in section 11.0431(2)(a), Florida Statutes. It is not clear whether having a public member on the Legislative Sunset Advisory Committee makes the exemption in section 11.0431(2)(a), Florida Statutes, inapplicable.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably as a committee substitute. The amendment narrowed the scope of the public records exemption to only include the required agency report and other records, including working papers and drafts, which are prepared or maintained in order to present the report of the Legislative Sunset Advisory Committee. The amendment also narrowed the timeframe for the exemption to six months after the report is presented. The amendment added a provision, which is contained in other public records exemptions of the Legislature, to make these records public if they are released to persons other than the specified members and employees of the Legislature.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; creating s. 21.0195, F.S.; exempting from public records requirements agency reports submitted under s. 21.006, F.S.; exempting from public records requirements records, working papers, and drafts prepared or maintained in preparing the report required under s. 21.009, F.S.; providing limitations on the operation of the exemptions; specifying that information received by the committee in performing its duties under ch. 21, F.S., that is confidential or exempt shall remain confidential or exempt; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 21.0195, Florida Statutes, is created to read:

21.0195 Committee records; exemption from public disclosure.--

(1) The following records are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) The agency report submitted under s. 21.006.

(b) All records, including working papers and drafts, prepared or maintained by the committee in order to prepare the committee report required under s. 21.009.

(2) The exemptions in subsection (1) shall cease to operate:

(a) Six months after the date the report is presented as required under s. 21.009.

(b) If the agency report or the records described in subsection (1) are provided by a member or legislative employee of the committee to any person other than a member of the committee, an employee of the Legislature, a member of the Legislature who is a supervisor of a legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.

(3) A record held by another entity that is confidential or exempt by law and that the committee receives in connection with the performance of its duties under this chapter remains confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the agency report submitted under s. 21.006, Florida Statutes, and the records, including working papers and drafts, prepared or maintained by the Legislative Sunset Advisory Committee in presenting the report required under s. 21.009, Florida Statutes, be made exempt from public records requirements. The Legislature finds that the release of the information would hinder the ability of the committee to conduct its evaluation and prepare its report on whether to abolish a state agency and its advisory committees because the agency, employees, and other interested persons might be reluctant to provide information knowing that the information would immediately be public and could potentially affect the operation, employment, or other dealings at the agency under review. Protecting the information would help the committee complete a more thorough and reliable evaluation and, therefore, make a better recommendation as to whether or not to terminate a state agency and its advisory committees.

Section 3. This act shall take effect July 1, 2006, if House Bill 1123 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1125**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Sansom offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert::

Section 1. Section 21.0195, Florida Statutes, is created to read:

21.0195 Confidentiality of information to conduct an evaluation and prepare a report.--

(1) A working paper, including all documentary or other information, prepared or maintained by the committee in performing its duties under this chapter to conduct an evaluation and prepare a report is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) A record held by another entity that is considered to be confidential and exempt by law and that the committee receives in connection with the performance of the committee's functions under this chapter remains confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the working papers, including all documentary or other information, prepared or maintained by the Legislative Sunset Advisory Committee in performing its duties under chapter 21, Florida Statutes, to conduct an evaluation and prepare a report on whether to abolish a state agency and its advisory committees as defined in s. 21.002, Florida Statutes, be made exempt from public records requirements. The Legislature finds that the release of such information would hinder the ability of the committee to conduct its evaluation and prepare its report on whether to abolish a state agency and its advisory committees because employees and other interested persons might be reluctant to provide information knowing that the information would be public and could potentially affect their employment or other dealings with the agency under review. Protecting such information would help the committee complete a more thorough and reliable evaluation and therefore make a better recommendation as to whether or not to terminate a state agency and its advisory committees.

Section 3. This act shall take effect July 1, 2006, if House Bill 1123 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

======= T I T L E A M E N D M E N T =======

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; creating s. 21.0195, F.S.; exempting from public records requirements working papers, including all documentary or other information, prepared or maintained by the Legislative Sunset Advisory Committee in performing its duties under ch. 21, F.S., to conduct an evaluation and prepare a report; specifying that information received for such purpose that is confidential and exempt shall remain confidential and exempt; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1161 Okeechobee County
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:** SB 2220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) Local Government Council	7 Y, 0 N	Nelson	Hamby
3) Fiscal Council	(W/D)		
4) State Administration Council		Brown	Bussey
5)			

SUMMARY ANALYSIS

HB 1161 provides a career service system for employees of the Okeechobee County Sheriff's Office. The bill provides for the application of the act to all full-time sworn and civilian persons employed by the sheriff with specified exemptions. The bill also provides for probationary periods, a process for suspension or dismissal, the creation and duties of ad hoc career service appeal boards, and the transition of employees during a new administration.

The bill has no state fiscal impact.

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill creates career service boards to hear employee disciplinary cases. These boards have subpoena power as part of the disciplinary hearing process. The sheriff is granted rulemaking authority to implement the legislation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Sixty-six of Florida's 67 counties have elected sheriffs as their chief law-enforcement officers. Miami-Dade County has an appointed chief law-enforcement officer whose title is Director of the Miami-Dade Police Department. Sheriffs serve four-year terms, and have county-wide jurisdiction that includes incorporated as well as unincorporated areas.

Pursuant to s. 14, Art. III of the State Constitution, s. 125.01(1)(u), F.S., and s. 30.53, F.S., a civil service system for sheriff's employees may be created by local governments via local ordinance. Section 14 of Art. III of the State Constitution provides:

> By law there shall be created a civil service system for state employees, except those expressly exempted, and there may be created civil service systems and boards for county, district or municipal employees and for such offices thereof as are not elected or appointed by the governor, and there may be authorized such boards as are necessary to prescribe the qualifications, method of selection and tenure of such employees and officers.

The powers of the governing body of a county are set forth in s. 125.01, F.S. This power includes the authority, as provided in paragraph (u) of subsection (1) of s.125.01, F.S., to "[c]reate civil service systems and boards." While the independence of a sheriff is preserved in s. 30.53, F.S., that section contains a further provision that it not be construed to "restrict the establishment or operation of any civil service system" or board created pursuant to s. 14, Art. III of the State Constitution. See, also, City of Casselberry v. Orange County Police Benevolent Association, 482 So. 2d 336 (Fla. 1986) (providing that local governments are vested with the authority to establish civil service systems via local ordinance).

A number of sheriffs have civil service systems established by the Legislature through special act, including: Alachua (chs. 84-388 and 86-342, L.O.F.), Bay (ch. 84-390, L.O.F.), Brevard (ch. 83-373, L.O.F.), Broward (ch. 93-370, L.O.F), Charlotte (chs. 79-436, 86-349 and 89-508, L.O.F.), Citrus (ch. 2001-296, L.O.F.), Clay (chs. 89-522 and 93-379, L.O.F.), Columbia (ch. 2004-413, L.O.F.), Escambia (ch. 89-492, L.O.F.), Flagler (chs. 90-450 and 2000-482, L.O.F.), Glades (ch. 2003-311, L.O.F.), Hernando (ch. 2000-414, L.O.F.), Indian River (ch. 2002-355, L.O.F.), Lake (chs. 90-386, 93-358 and 2005-349, L.O.F.), Lee (chs. 74-522, 87-547 and 95-514, L.O.F.), Leon (ch. 83-456, L.O.F.), Madison (95-470), Manatee (89-472), Marion (87-457), Martin (93-388), Monroe (78-567, 89-410, 89-461, 97-345 and 98-507, L.O.F.), Okaloosa (chs. 81-442, 85-472 and 90-492, L.O.F.), Orange (ch. 89-507, L.O.F.), Osceola (chs. 89-516 and 2000-388, L.O.F.), Palm Beach (chs. 93-367, 99-437 and 2004-404, L.O.F.), Pasco (ch. 90-491, L.O.F.), Pinellas (chs. 89-404 and 90-395, L.O.F.), Polk (chs. 88-443 and 98-516, L.O.F.), St. Lucie (ch. 89-475, L.O.F.), Santa Rosa (ch. 2002-385, L.O.F.), Sarasota (ch. 86-344, L.O.F.), and Seminole (ch. 77-653, 80-612, 88-451 and 97-376, L.O.F.) counties.

The Okeechobee County Sheriff's Office currently does not have a civil service system.[1]

Effect of Proposed Changes

HB 1161 creates a career service system for employees of the Okeechobee County Sheriff's Office. The bill provides for the application of the act to all full-time sworn and civilian persons employed by the sheriff. Specifically excluded from the provisions of the act are:

- the sheriff;
- the undersheriff;
- special deputies appointed pursuant to s. 30.09(4), F. S.;[2]
- members of the sheriff's reserve/auxiliary units; or
- persons appointed as part-time deputy sheriffs as defined by the Criminal Justice Standards and Training Commission, unless such persons are also employed full time by the sheriff.

The bill states that it is not the intent of the act to grant collective bargaining rights to persons employed by the Okeechobee County Sheriff's Office who do not otherwise have that right pursuant to law.[3]

When a covered employee has completed one calendar year of service,[4] the employee attains permanent status in the Sheriff's Office;[5] however, if an employee is placed on disciplinary probation for a period of six months or more, or is terminated and rehired at a later date, the employee is required to repeat this probationary period. Any employee who is required to serve a probationary period attendant to a promotion retains his or her permanent status, but may be returned to his or her prior rank during such probationary period without the right of appeal.

Once an employee has achieved career service status within the Sheriff's Office, he or she may only be suspended or dismissed for cause. Prior to any such action, the employee must be furnished with written notice and offered an opportunity to respond. In extraordinary situations, an employee may be suspended or dismissed immediately with notice provided within 24 hours or as soon as is practicable.

"Cause for suspension or dismissal" includes, but is not limited to:

- negligence;
- inefficiency or inability to perform assigned duties;
- insubordination;
- violation of provisions of law or office rules;

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[1] The terms "civil service system" and "career service system" are used interchangeably.

[2] This section designates special deputy sheriffs appointed by the sheriff: (a) to attend elections on election days; (b) to perform undercover investigative work; (c) for specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or for watch or guard duties, when serving in such capacity at specified locations or areas only; (d) for special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners; (e) to aid in preserving law and order, or to give necessary assistance in the event of any threatened or actual hurricane, fire, flood or other natural disaster, or in the event of any major tragedy such as an act of local terrorism or a national terrorism alert, an airplane crash, a train or automobile wreck, or a similar accident; (f) to raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy; (g) to serve as a parking enforcement specialist pursuant to s. 316.640(2), F.S.

[3] Section 6, Art. I of the State Constitution grants public employees the right to collectively bargain. In 2003, the Florida Supreme Court held that deputy sheriffs were "employees" for purposes of this constitutional right. See, Coastal Florida Police Benevolent Association, Inc. v. Williams, 838 So.2d 543 (Fla. 2003).

[4] All time of employment while in a Criminal Justice Standards and Training Commission-approved academy or other comparable training for certification as a sworn officer or deputy sheriff is not counted in determining whether an employee has attained one calendar year of minimum service.

[5] All sworn and civilian persons in the employ of the sheriff on the effective date of the act who have served for a period of one calendar year or more are considered career service employees. All other employees achieve this status subject to the provisions of the act upon reaching their one-calendar-year service anniversary.

- conduct unbecoming a public employee;
- misconduct;
- alcohol abuse;
- prescription drug abuse, or illegal drug use;
- adjudication of guilt by a court of competent jurisdiction;
- a plea of guilty or of nolo contendere; or
- a verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation with respect to any felony, misdemeanor or major traffic infraction charges.

When a newly elected or appointed sheriff assumes office, he or she is required to continue the employment of all career service personnel unless cause for dismissal exists. The sheriff has the right to replace persons serving in the rank of captain or above, including the executive secretary, with personnel of his or her choosing. The sheriff may offer these persons any position that the sheriff chooses, or to cease their employment with the department. Career service employees holding the rank of lieutenant may be reduced to the next lowest rank at the current maximum pay step.[6] These actions are not appealable, nor are dismissals or demotions pursuant to across-the-board actions directed by the Okeechobee County Board of Commissioners, resulting from county fiscal impacts.

Ad hoc career service appeal boards are appointed for the purpose of hearing appeals arising from personnel actions which result in dismissal, suspension, demotion or reduction in pay. Lateral transfers, shift changes, oral or written reprimands, and suspensions of three working days or less (unless it is a subsequent such suspension within one calendar year) are not appealable. The scope of a career service appeal board is limited to disciplinary proceedings and termination actions. A career service appeal board has the authority to conduct hearings, and make findings of fact and recommendations to the sheriff. The board has no investigative powers.

A career service appeal board consists of three members of the Office of the Sheriff. The sheriff selects one member; the employee requesting the hearing selects another member; and these two individuals select a third member, who must hold the rank of lieutenant or above, to serve as chairperson. Each selected member is uncompensated, has the right to decline to serve, and must have no involvement with the issues under consideration.

A request for a hearing must be made in writing to the employee's immediate supervisor within 10 working days after notice of an appealable disciplinary action. The request must contain a brief statement of the matters to be considered by the board, and the name of the employee selected to be a board member. The supervisor is required to immediately forward the hearing request to the sheriff and the appropriate division commander. A career service appeal board must be impaneled and a hearing date scheduled by the sheriff within 10 working days after receipt of the request, unless this deadline is waived in writing by the employee. When summary discipline is imposed by any supervisor, the sheriff may order a career service appeal board to convene and review the action.

The employee and his or her representative have the right to be present during the hearing, and to offer any relevant evidence on the employee's behalf. During such hearings, the rules of evidence and civil or criminal rules of procedure are not applied. All witnesses must be notified in writing by the chairperson of the board, through the appropriate chain of command, of the date and time of the convening of the board. The board has the power to issue subpoenas upon request of any party or upon its own motion. Employees and their representatives have the opportunity to present evidence, conduct cross-examination, and submit rebuttal evidence.

The board must submit its written findings and recommendations to the sheriff within five days after the hearing. It may make any recommended disposition, including, but not limited to, oral or verbal reprimand, suspension, reduction of rank, termination of employment, sustention or reversal of the original decision, or recommendation of a more severe disposition. The sheriff is required to notify the

[6] While this action would constitute a "demotion," it would not be "disciplinary," and thus not appealable, as specified by the act.

employee of the decision of the career service appeal board. However, the sheriff has the right to make a final determination in the matter. In the event an employee is exonerated, he or she must be reinstated without prejudice or penalty.

No sworn or civilian employee of the Sheriff's Office may be discharged, disciplined, demoted, denied promotion or reassignment, or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, in retaliation for exercising the rights granted by the act.

The Sheriff is authorized to adopt such rules, regulations and procedures necessary for the administration and implementation of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

The bill provides an effective date of upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Provides for applicability of the act; permanent status of employees; cause for suspension or dismissal; transition of career service employees; and administration.

Section 2: Provides for career service appeal boards; creation; membership; and duties.

Section 3: Provides for status as permanent employees; and prohibits actions to circumvent this act.

Section 4: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 18, 2006

WHERE? *The Okeechobee News*, a daily newspaper published in Okeechobee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the bill will have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Sheriff is authorized to adopt such rules, regulations and procedures necessary for the administration and implementation of the act, although it is specified that nothing in the act may be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Sponsor may want to amend the bill to clarify that a promoted employee is required to serve a probationary period for his or her new position; and that those serving in the rank of captain or above, and the executive secretary, are not employed in career service positions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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The Okeechobee News

P.O. Box 639, Okeechobee, Florida 34973

(863) 763-3134

Published Daily

STATE OF FLORIDA
COUNTY OF OKEECHOBEE

Before the undersigned authority personally appeared Judy Kasten, who on oath says she is Publisher of the Okeechobee News, a DAILY Newspaper published at Okeechobee, in Okeechobee County, Florida; that the attached copy of advertisement, being a

Public Notice
ad # 109845

in the matter of

Notice of Local Legislation

in the 19th Judicial District of the Circuit Court of Okeechobee County, Florida, was published in said newspaper in the issues

January 18, 2006

Affiant further says that the said Okeechobee News is a newspaper published at Okeechobee, in said Okeechobee County, Florida, and that said newspaper has heretofore been published continuously in said Okeechobee County, Florida each week and has been entered as second class mail matter at the post office in Okeechobee, in said Okeechobee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Judy Kasten

Sworn to and subscribed before me this 18th day of January A.D. 20 06

Karmen R. Brown

Notary Public, State of Florida at Large

Karmen R. Brown
Commission #DD272118
Expires: Jan 17, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

NOTICE OF LOCAL LEGISLATION
TO WHOM IT MAY CONCERN

Notice is hereby given of the Okeechobee County Sheriff's Office intent to apply to the 2006 Legislature for passage of an act relating to Okeechobee County providing for Career Service for the employees of the Okeechobee County Sheriff's Office; providing for application of the act; permanent status for employees; administration; providing for career service appeals board; providing severability; prohibiting certain actions to circumvent the and providing an effective date.

Okeechobee County Sheriff's Office
504 NW 4th Street
Okeechobee, FL 34972
January 18, 2006

109845 DN 1/18/06

Client:	760470	OKEECHOBEE COUNTY SHERIFF	Phone:	(863) 763-3117 Ext: 0000	
Ad #	109845	Requested By:	Fax:		
Sales Rep.:		JANET LEVY - CLASSIFIED CTR.	Phone:		
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Class.:	5005	Public Notice			
Start Date:	01/18/2006	End Date: 01/18/2006		Nb. of Inserts:	1
Publications:	Okeechobee News				
Total Price:	$44.88				

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Okeechobee County Sheriff's Office
504 NW 4th Street
Okeechobee, FL 34972
January 18, 2006

109845 ON 1/18/06

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL CERTIFICATION

BILL #: _____

SPONSOR(S): Machek

RELATING TO: Okeechobee County Sheriff's Office
[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Okeechobee

CONTACT PERSON: Victoria Nowlan, Legislative Assistant to Rep. Machek

PHONE # and E-MAIL 561-279-1633 victoria.nowlan@myfloridahouse.gov

I. House policy requires that three things occur before a Council or Committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a local public hearing must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation. ***Local bills will not be considered by a Council or Committee without a completed, original Local Bill Certification Form.***

Does the delegation certify that the purpose of the bill cannot be accomplished locally?
YES [X] NO [ ]

Has a public hearing been held? **YES [x] NO [ ]**

Date hearing held: 31 January, 2006
Location: Okeechobee County Commision Chambers, Okeechobee, FL

Was this bill formally approved by a majority of the delegation members?
YES [ ] NO [ ] UNIT RULE [ ] UNANIMOUS [ ]

II. Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided in general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this Constitutional requirement been met?

Notice published: **YES [x] NO [ ]** **Date:** _____

Where? _____ **County:** Okeechobee

Referendum in lieu of publication: **YES [ ] NO [x]**

III. Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district; unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

Has this constitutional requirement been met?
YES [ ] NO [ ] NOT APPLICABLE [x]

House policy requires that an Economic Impact Statement for Local Bills be prepared at the local level.

Frank Attkisson 1/31/06

Delegation Chair (Original Signature) Date

BILL #: _____

SPONSOR(S): Representative Richard Machek

RELATING TO: Okeechobee County

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 06-07	FY 07-08
Expenditures:	No Cost	No Cost

II, ANTICIPATED SOURCE(S) OF FUNDING:

	FY 06-07	FY 07-08
Federal:	No Cost	No Cost
State:	No Cost	No Cost
Local:	No Cost	No Cost

III. ANTICIPATED NEW, INCREASED, OR DECREASE REVENUES

	FY 06-07	FY 07-08
Revenues:	None	None

IV. ESTIMATED ECONIMIC IMPACT ON INDIVIDUALS, BUSINESS OR GOVERMENTS:

Advantages: Will provide no impact

Disadvantages: Will provide no impact

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT.

Will provide no impact

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDE SOURCE OF DATA):

After speaking with the Okeechobee County Administrator there is no foreseen impact on the County.

PREPARDED BY: _____ 01/31/06
Date

TITLE: LIEUTENANT

REPRESENTING: OKEECHOBEE COUNTY SHERIFF'S OFFICE

A bill to be entitled

An act relating to Okeechobee County; providing for career service for employees of the Okeechobee County Sheriff's Office; providing for application of the act, permanent status of employees, suspension or dismissal, transition of career service employees, and administration; providing for a procedure with respect to complaints against employees; providing for ad hoc career service appeal boards and membership and responsibilities thereof; providing for a disciplinary procedure and for appeals; providing for status as permanent employees; prohibiting certain actions to circumvent the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Employees of the Okeechobee County Sheriff's Office; applicability of the act; permanent status of employees; administration.--

(1) APPLICABILITY.--The provisions of this act shall apply to all full-time sworn and civilian persons in the employ of the Okeechobee County Sheriff's Office. The provisions of this act do not apply to the sheriff, undersheriff, special deputies appointed pursuant to section 30.09(4), Florida Statutes, members of the sheriff's reserve/auxiliary units, or persons appointed as part-time deputy sheriffs as defined by the Criminal Justice Standards and Training Commission, unless any such person is also employed full time by the Okeechobee County

Sheriff's Office. As used in this act, the terms "employee," "employ," and "employment" refer to all persons, whether employed or appointed, to whom the act applies. It is not, however, the intent of this act to grant the right of collective bargaining to persons in the employ of the Okeechobee County Sheriff's Office who do not otherwise have that right pursuant to law.

(2) PERMANENT STATUS; CAUSE FOR SUSPENSION OR DISMISSAL.--

(a)1. When an employee of the sheriff to whom the provisions of this act apply has served in such employment for a period of 1 calendar year, the employee shall have attained permanent status in the Okeechobee County Sheriff's Office; however, if an employee is placed on disciplinary probation for a period of 6 months or more or is terminated and rehired at a later date, the employee shall be required to complete 1 calendar year of service from the date of the disciplinary action or rehire before being granted permanent status. The term "career service employee" as used in this act means an employee who has successfully completed his or her probationary period.

2. Any employee who is required to serve a probationary period attendant to a promotion shall retain permanent status in the Office of the Sheriff but may be returned to his or her prior rank during such probationary period without the right of appeal as provided in section 2. For the purpose of determining career service status as defined in this act, all time in the employment of the Office of the Sheriff while in a Criminal Justice Standards and Training Commission-approved academy or other comparable training for certification as a sworn officer

or deputy sheriff shall not be counted or considered in any manner in determining whether the employee has attained 1 calendar year of minimum service.

(b) Any employee who has achieved career service status with the Okeechobee County Sheriff's Office may only be suspended or dismissed for cause, provided that, prior to such action, the employee has been furnished written notice of the proposed action and has been offered an opportunity to respond to the reasons for the suspension or dismissal. In extraordinary situations, however, such as when delay could result in damage or injury to property or persons, an employee may be suspended or dismissed immediately and then be provided notice thereof and reasons therefor within 24 hours or as soon as is practicable if circumstances surrounding such extraordinary situation make notice within 24 hours impracticable. "Cause for suspension or dismissal" includes, but is not limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of provisions of law or office rules, conduct unbecoming a public employee, misconduct, alcohol abuse, prescription drug abuse, or illegal drug use. "Cause for suspension or dismissal" also includes, but is not limited to, adjudication of guilt by a court of competent jurisdiction, a plea of guilty or of nolo contendere, or a verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation with respect to any felony, misdemeanor, or major traffic infraction charges.

(3) TRANSITION OF CAREER SERVICE EMPLOYEES.--When a newly elected or appointed sheriff assumes office, the new sheriff

shall continue the employment of all currently employed career service personnel unless cause for dismissal, as provided in this section, exists. The sheriff shall have the right to replace persons serving in the rank of captain or above, including the executive secretary, with new personnel of the sheriff's choosing. The sheriff shall have the right to offer these persons any position that the sheriff chooses or to cease their employment with the department. The current employees holding the rank of lieutenant who are career service employees may be reduced to the next lowest rank at the current maximum pay step, which rank shall be permanent unless later reduced by disciplinary demotion or increased through subsequent promotion. Their regular base salaries may be reduced or increased accordingly. Actions taken pursuant to this subsection affecting the undersheriff, colonels, majors, directors, or their executive staff equivalents shall not be appealable under this act. Dismissals or demotions pursuant to across-the-board actions directed by the Okeechobee County Board of Commissioners, resulting from county fiscal impacts, shall not be appealable under the provisions of section 2.

(4) ADMINISTRATION.--The sheriff shall have full authority to adopt such rules, regulations, and procedures necessary for the administration and implementation of this act. However, nothing in this act shall be construed as affecting the budget-making powers of the Okeechobee County Board of Commissioners.

Section 2. Career service appeal boards; creation; membership; duties.--

(1) FUNCTION OF BOARDS.--Ad hoc career service appeal boards shall be appointed as provided in this section for the purpose of hearing appeals of career service employees arising from personnel actions brought under the rules, regulations, or policies of the Office of the Sheriff which result in dismissal, suspension, demotion, or reduction in pay. Lateral transfers, shift changes, oral or written reprimands, and suspensions of 3 working days or fewer shall not be appealable to a career service appeal board. However, no more than one such suspension may occur within 1 calendar year without the right to appeal. The scope of a career service appeal board is limited to disciplinary proceedings and termination actions. A career service appeal board shall have the authority to conduct hearings and make findings of fact and recommendations to the sheriff. The sheriff shall not be bound by the findings or recommendations of such boards but shall consider them in making his or her final decision.

(2) MEMBERSHIP AND RESPONSIBILITY OF CAREER SERVICE APPEAL BOARD.--

(a) A career service appeal board shall consist of three members of the Office of the Sheriff. The sheriff shall select one member; the employee requesting the hearing shall select one member; and these two members shall select the third member, who must hold the rank of lieutenant or above, to serve as chairperson. Each selected member shall have the right to decline to serve.

(b) All members of the career service appeal board shall be selected on the basis of fairness, objectivity, and

impartiality. The board shall have no investigative powers and shall function in the capacity of a fact finder in an effort to arrive at a fair and equitable recommendation in all matters brought before it. Selected members shall have no involvement with the issues under consideration. Membership of the board is voluntary and is without remuneration. Members may not discuss matters to be heard before the board until the board convenes and then they may only discuss such matters during the officially convened sessions of the board.

(c) The career service appeal board chairperson shall have the responsibility to:

1. Chair all meetings using parliamentary rules of order.

2. Request that the employee provide the names of any witnesses.

3. Schedule and provide written notification of all meetings to the witnesses, board members, and the employee.

4. Provide copies of all charges to board members.

5. Ensure compliance with hearing procedures.

(3) PROCEDURE WITH RESPECT TO HEARINGS.--

(a) Any career service employee may request a hearing before a career service appeal board for any appealable disciplinary action of his or her superiors that adversely affects his or her employment.

(b) A request for a hearing shall be made in writing to the employee's immediate supervisor within 10 working days after notice of appealable disciplinary action. The request shall contain a brief statement of the matters to be considered by the board and the name of the employee selected to be a member of

the board.

(c) The immediate supervisor shall forward the hearing request to the sheriff and the appropriate division commander without delay. A career service appeal board shall be impaneled and a hearing date scheduled by the sheriff within 10 working days after receipt of the request for a hearing unless waived in writing by the employee.

(d) The employee and his or her representative have the right to be present and to present any relevant evidence on the employee's behalf. During such hearings, the technical rules of evidence shall not apply. Neither the employee nor his or her representative may disrupt the proceedings. The qualification of disruptive conduct shall be at the exclusive determination of the chairperson of the career service appeal board.

(e) The employee shall not discuss the circumstances of the matter being brought before the board except through the chairperson.

(f) All witnesses shall be notified in writing by the chairperson of the board, through the appropriate chain of command, of the date and time of the convening of the career service appeal board. Nonemployee witnesses may be called to appear before the board only at the request of the board.

(g) The board shall have the power to issue subpoenas upon request of any party or upon its own motion.

(4) CONDUCT OF HEARING.--

(a) Career service appeal boards are designed to determine the truth while maintaining an atmosphere of fundamental fairness and shall not be controlled by civil or criminal rules

of procedure.

(b) Board members may receive verbal or written testimony concerning any matter considered relevant by the board. The board may review any record, including, but not limited to, performance evaluations and disciplinary files.

(c) Employees and their representatives shall have opportunity to present evidence, conduct cross-examination, and submit rebuttal evidence.

(5) FINDINGS AND RECOMMENDATIONS OF THE CAREER SERVICE APPEAL BOARD.--

(a) Each complaint shall receive a separate finding and recommendation by a majority of the board. Each finding shall consider the seriousness of the complaint, any extenuating circumstances, the tenure of the employee, and the employee's past conduct record. The board shall submit to the sheriff its written findings of fact and recommendations within 5 days after the hearing.

(b) The board may place before the sheriff any recommended disposition that the board believes may be of benefit to the Office of the Sheriff, including, but not limited to, oral or verbal reprimand, suspension, reduction of rank, termination of employment, sustention or reversal of the original decision, or recommendation of a more severe disposition.

(c) The sheriff shall review the findings and recommendations of the career service appeal board and may either approve or disapprove them. The sheriff has the sole discretion to overrule the findings of the board.

(d) The sheriff shall notify the employee of the final

results of the career service appeal board and the reasons therefor.

(e) In the event the employee is exonerated, the employee shall be reinstated without prejudice or penalty.

(f) When summary discipline is imposed by any supervisor, the sheriff may order a career service appeal board to convene and review the action of the supervisor.

(g) All proceedings of the board shall be retained by the Human Resources Department of the Office of the Sheriff.

(h) All associated reports, paperwork, and personnel action taken as a result of the appeal shall be retained by the Human Resources Department of the Office of the Sheriff.

Section 3. (1) All sworn and civilian persons in the employ of the Okeechobee County Sheriff's Office on the effective date of this act who have served for a period of 1 calendar year or more as of such date shall be permanent employees subject to the provisions of this act. All other employees shall become permanent employees subject to the provisions of this act upon reaching their 1-calendar-year service anniversary date.

(2) No sworn or civilian employee of the Okeechobee County Sheriff's Office shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this act.

Section 4. This act shall take effect upon becoming a law.

HB 1165 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 CS Florida Retirement System
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 2182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	8 Y, 0 N	DiVagno	Hamby
3) Fiscal Council	18 Y, 3 N, w/CS	Dobbs	Kelly
4) State Administration Council		Mitchell	Bussey
5)			

SUMMARY ANALYSIS

Medical examiners and certain forensic employees were added to the Special Risk Class in 2005. This bill permits these medical examiners and forensic employees to purchase additional retirement credit to upgrade their previous service in the Florida Retirement System to Special Risk Class service. The bill requires the contributions for upgrading pervious service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest. The bill permits an employer to purchase upgraded credit on behalf of a member. The bill provides legislative findings and declares that it fulfills an important state interest.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill does not appear to have a fiscal impact on the revenues of the state or local governments. Yet, this bill does appear to have a fiscal impact on the expenditures of the state and local governments through additional liability to the Florida Retirement System of $87,000 for the state and $249,000 for local governments in Fiscal Year 2007. The bill funds this liability in two ways: (1) beginning July 1, 2006, the bill provides an overall 0.01 percent increase to the employer contribution rate for the Special Risk Class; and (2) beginning with the 2006-2007 fiscal year, the bill provides $100,000 in recurring General Revenue funding for state agencies to pay for the increased employer contribution rate. *Since there is a potential delay between the effective date of the benefit and the funding of the benefit, this bill may not satisfy the constitutional requirement for concurrent funding.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the members of the Special Risk Class who may upgrade previous service to Special Risk Class service.

B. EFFECT OF PROPOSED CHANGES:

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[1]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[2] The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.[3]

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[4] Members of the FRS defined benefit plan belong to one of five membership classes:

Regular Class[5]	570,888 members	88.00%
Special Risk Class[6]	68,466 members	10.59%
Special Risk Administrative Support Class[7]	80 members	0.01%
Senior Management Service Class[8]	6,823 members	1.10%
Elected Officers Class[9]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.[10]

Expansion of the Special Risk Class and Upgraded Service

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,[11] may need to retire at an earlier age with less service than other types of employees.[12] The only employees originally in the Special Risk Class were law enforcement

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[1] Fla. Stat. § 121.025 (2005).
[2] Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at http://www.frs.state.fl.us/ (last visited Jan. 11, 2006).
[3] Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at http://www.frs.state.fl.us/ (last visited Jan. 11, 2006).
[4] Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at http://www.frs.state.fl.us/ (last visited Jan. 11, 2006).
[5] Fla. Stat. § 121.021(12) (2005).
[6] Fla. Stat. § 121.0515 (2005).
[7] Fla. Stat. § 121.0515(7) (2005).
[8] Fla. Stat. § 121.055 (2005).
[9] Fla. Stat. § 121.052 (2005).
[10] *See, e.g.,* Fla. Stat. 121.055(3)(a)1. (2005).
[11] Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).
[12] Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

officers, correctional officers, and firefighters.[13] Starting in 1999, however, the Legislature began expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics[14]
2000	Community-Based Correctional Probation Officers[15]
	Twenty-four types of employees of correctional or forensic facilities or institutions[16]
2001	Youth Custody Officers[17]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[18]

Another legislative trend that has followed the expansion of the Special Risk Class is allowing members who have previous service in another class of the Florida Retirement System, usually the Regular Class, to purchase additional retirement credit to upgrade the previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for upgraded service.[19] In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.[20]

Effect of Bill on Upgraded Service for Medical Examiners and Certain Forensic Employees

This bill permits medical examiners and certain forensic employees who were added to the Special Risk Class in 2005 to purchase additional retirement credit to upgrade previous service in the Florida Retirement System to Special Risk Class service.[21] The bill requires the contributions for upgrading pervious service to Special Risk Class service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest at a rate of 6.5 percent a year, compounded annually until the date of payment. The bill permits an employer to purchase upgraded credit on behalf of a member. The bill provides legislative findings and declares that it fulfills an important state interest.

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after

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[13] Ch. 78-308, Laws of Fla.
[14] Ch. 99-392, Laws of Fla., § 23.
[15] Ch. 2000-169, Laws of Fla. § 29.
[16] Ch. 2000-169, Laws of Fla. § 29. (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).
[17] Ch. 2001-125, Laws of Fla., § 43.
[18] Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See also* Int'l Ass'n for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[19] Ch. 2001-235, Laws of Fla., § 6.
[20] Ch. 2002-273, Laws of Fla., § 16.
[21] Fla. HB 1165 (2006) (to the extent of the percentages of the member's average final compensation provided in section 121.091(1)(a)2, Florida Statutes).

January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.[22]

A recent actuarial study estimated the costs to upgrade previous service of medical examiners and qualifying forensic employees:

> The projected increase in actuarial liabilities is $26.4 million offset by the projected cost the members would pay for the eligible service under this proposal of $22.1 million, which results in the net additional unfunded liabilities of $4.3 million.[23]

The actuarial study further notes that this change will require an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class.[24]

The actuarial study explains that this fiscal impact is, in part, a result of differences in benefit accrual rates and contribution rates for certain periods: Benefits now accrue at a rate of 3.0 percent per year for all periods after 1974; yet, contributions between 1978 and 1992 were only funded with contribution rates of 2.0 percent to 2.8 percent.[25] Thus, to the extent upgraded service includes this 1978 to 1992 period, there is a shortfall between the price paid by the upgrading members and the true estimated costs to the Florida Retirement System.

Effective July 1, 2006, the bill provides funding for the unfunded liability identified in the actuarial study. The bill provides an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class. The bill also provides $100,000 from the General Revenue Fund on a recurring basis to fund the associated state costs.

C. SECTION DIRECTORY:

Section 1: Amends section 121.0515, Florida Statutes, to permit medical examiners and certain forensic employees to purchase upgraded service in the Special Risk Class.

Section 2: Effective July 1, 2006, provides an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class.

Section 3: Effective July 1, 2006, provides $100,000 in recurring General Revenue funding for state agencies.

Section 4: Provides legislative findings and declares that the bill fulfills an important state interest.

Section 5: Provides that this bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill *does not* appear to have a fiscal impact on state government revenues.

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[22] Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

[23] Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

[24] *Id.*

[25] *Id.*

2. Expenditures:

This bill appears to have a fiscal impact on state government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost the state $87,000 in Fiscal Year 2007.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill *does not* appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill appears to have a fiscal impact on local government expenditures. The unfunded liability to the Florida Retirement System from this bill is estimated to cost local governments $249,000 in Fiscal Year 2007.[27]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill *does not* appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill increases the Special Risk Class employer contribution rate by 0.01 percent to address the unfunded liability. The bill provides $100,000 in recurring General Revenue funding to pay the estimated annual cost to the state for the increased employer contributions. The estimated first year cost of the increased employer contributions to local governments is $249,000.[28]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

This bill is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution.[29]

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[26] Fla. Dep't of Mgmt. Serv., HB 1165 (2006) Substantive Bill Analysis (Mar. 20, 2006) (on file with dep't).
[27] Fla. Dep't of Mgmt. Serv., HB 1165 (2006) Substantive Bill Analysis (Rev. Apr. 7, 2006) (on file with dep't).
[28] *Id.*
[29] Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

2. Other:

Article X, Section 14

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. Since there is a potential delay between the effective date of the benefit (upon becoming law) and the funding (July 1, 2006), this bill does not concurrently provide for the increase and may not satisfy this constitutional requirement.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Effective Date

The current effective date of the bill creates a small, but potentially unconstitutional, gap between when the retirement benefit becomes effective and when it is funded.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted an amendment which provided legislative findings and declared that the bill fulfilled an important state interest. The bill was reported favorably with committee substitute.

On April 11, 2006, the Fiscal Council adopted an amendment to increase the employer contribution rate on July 1, 2006, for the Special Risk Class to address the unfunded liability identified in the actuarial study.[30] The amendment also provided beginning with the 2006-2007 fiscal year $100,000 in recurring General Revenue funding for state agency employers to pay for the increased costs. The bill was reported favorably with committee substitute.

[30] Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.0515, F.S.; authorizing certain members to purchase additional retirement credit to upgrade prior service to Special Risk Class service; providing for the calculation of contributions for such service upgrade; authorizing the employer to purchase such additional credit for the member; increasing a contribution rate for certain benefit change funding purposes; directing the Division of Statutory Revision to adjust contribution rates set forth in s. 121.71, F.S.; providing an appropriation; providing a declaration of important state interest; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (9) of section 121.0515, Florida Statutes, to read:

121.0515 Special risk membership.--

(9) CREDIT FOR UPGRADED SERVICE.--

(c) Any member of the Special Risk Class who has earned creditable service in another membership class of the Florida Retirement System as a medical examiner or as an employee of a law enforcement agency in a forensic discipline as described in paragraph (2)(h), which service is within the purview of the Special Risk Class, may purchase additional retirement credit to upgrade such service to Special Risk Class service, to the extent of the percentages of the member's average final compensation provided in s. 121.091(1)(a)2. Contributions for upgrading such service to Special Risk Class credit under this subsection shall be equal to the difference in the contributions paid and the Special Risk Class contribution rate as a percentage of gross salary in effect for the period being claimed, plus interest thereon at the rate of 6.5 percent a year, compounded annually until the date of payment. This service credit may be purchased by the employer on behalf of the member.

Section 2. Effective July 1, 2006, in order to fund the benefits provided under section 1 of this act, the contribution rate that applies to the Special Risk Class of the Florida Retirement System shall be increased by 0.01 percentage points. This increase shall be in addition to all other changes to such contribution rates that may be enacted into law to take effect on that date. The Division of Statutory Revision is directed to adjust accordingly the contribution rates set forth in s. 121.71, Florida Statutes.

Section 3. Effective July 1, 2006, there is appropriated $100,000 from the General Revenue Fund on a recurring basis to Administered Funds to fund the state costs associated with the retirement benefits granted by this act.

Section 4. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended additional protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in a sound actuarial manner, as required by Section 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature hereby determines and declares that this act fulfills an important state interest.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1369 CS Public Records and Public Meetings
SPONSOR(S): Evers and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Williamson
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an invitation to bid or request for proposal. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier. Current law does not provide a public records exemption for an invitation to negotiate.

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an invitation to bid (ITB) or a request for proposal (RFP) and concurrently provides notice of its intent to reopen the ITB or RFP. The bill provides for expiration of the exemption.

The bill also expands the public records exemption to include a competitive sealed reply in response to an invitation to negotiate. Further, the bill creates a public meetings exemption for a meeting at which a negotiation with a vendor is conducted. A complete recording must be made of the exempt meeting. The recording is exempt from public records requirements for a limited period.

The bill provides for future review and repeal of the exemptions and provides a public necessity statement.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Agency Procurement

Agency procurements of commodities or contractual services that exceed $25,000 are governed by statute and rule that requires utilization of one of the following three types of competitive solicitations, unless otherwise authorized by law:[1]

- Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.[2] The contract must be awarded to the responsible[3] and responsive vendor[4] that submits the lowest responsive bid.[5]

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[1] *See, infra,* at pp. (discussing general exceptions and emergency, sole source, and state term contract purchases).
[2] Section 287.012(16), F.S.
[3] The term "responsible vendor" means, ". . . a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

- Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to define specifically the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.[6] Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award must be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.[7]
- Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.[8] After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.[9]

Public Records Exemption for Bids and Proposals

Current law provides a public records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bid or proposal is exempt until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.[10] Current law does not provide a public records exemption for an ITN.

The bill expands the current public records exemption for sealed bids or proposals. It provides that a sealed bid or proposal remains exempt if an agency rejects all bids or proposals submitted in response to an ITB or RFP and concurrently provides notice of its intent to reopen the ITB or RFP. The exemption expires once:

- Notice of a decision or intended decision is provided concerning the reopened ITB or RFP, or
- The agency withdraws the reopened ITB or RFP.

The bill provides for future review and repeal of the newly expanded exemption on October 2, 2011, and provides a public necessity statement.

Public Records and Public Meetings Exemptions for ITNs

The bill also expands the public records exemption to include a competitive sealed reply in response to an ITN. The competitive sealed reply is exempt from public records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed replies are opened, whichever occurs earlier.

If an agency rejects all competitive sealed replies in response to an ITN and reissues the ITN within 90 days after the notice of intent to reissue, then the bill provides that the rejected replies remain exempt. The extended exemption expires when the agency:

- Provides notice of a decision or intended decision concerning the reissued ITN, or
- Withdraws the reissued ITN.

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[4] "Responsive vendor" means, ". . . a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

[5] Section 287.057(1), F.S.; "Responsive bid," "responsive proposal," or "responsive reply" means, ". . . a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

[6] Sections 287.017(22) and 287.057(2), F.S.

[7] Section 287.057(2), F.S.

[8] Sections 287.012(17) and 287.057(3), F.S.; "Best value" means, ". . . the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

[9] Section 287.057(3), F.S.

[10] Section 119.071(1)(b), F.S.

The bill specifies that a competitive sealed reply is not exempt from public records requirements for longer than 12 months after the initial notice rejecting all replies.

The bill also creates a public meetings exemption for a meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3), F.S. A complete recording must be made of any exempt portion of a meeting and no portion of such meeting may be held off the record.

The bill further provides that the recording is exempt from public records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed replies are opened, whichever occurs earlier. If the agency, however, rejects all sealed replies then the recording remains exempt until the agency:

- Provides notice of a decision or intended decision concerning the reissued ITN, or
- Withdraws the reissued ITN.

The bill specifies that the recording is not exempt for longer than 12 months after the initial notice rejecting all replies.

The bill provides for future review and repeal of the exemption on October 2, 2011, and provides a public necessity statement.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the current exemption for sealed bids or proposals.

Section 2 amends s. 286.0113, F.S., to create a public meetings exemption relating to the ITN process.

Section 3 provides a public necessity statement.

Section 4 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The exemption could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemptions. In addition, costs could be associated with the requirement to make a complete recording of an exempt meeting.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Clarified that the initial response to an invitation to negotiate is exempt from public records requirements.
- Created a public meetings exemption for a meeting at which a negotiation with a vendor is conducted.
- Required a complete recording to be made of the closed meeting, which is temporarily exempt from public records requirements.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records and public meetings; amending s. 119.071, F.S.; creating a temporary exemption from public records requirements for rejected bids and proposals received by a state agency if the agency reissues the invitation to bid or request for proposals; providing for review and repeal; providing a statement of public necessity; creating a temporary exemption from public records requirements for a competitive sealed reply in response to an invitation to negotiate; providing an extension of the temporary exemption if the agency reissues the invitation to negotiate; providing for review and repeal; providing a statement of public necessity; amending s. 286.0113, F.S.; creating an exemption from public meetings requirements for a meeting at which negotiation with a vendor is conducted; requiring a recording of the meeting; temporarily exempting the recording from disclosure; providing an extension of the temporary exemption under specified circumstances;

providing for review and repeal; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(1) AGENCY ADMINISTRATION.--

(b)1.a. Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or within 10 days after bid or proposal opening, whichever is earlier.

b. If an agency rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals, the rejected bids or proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to bid or request for proposals or until the agency withdraws the reissued invitation to bid or request for proposals. This sub-subparagraph is subject to the Open Government Sunset Review Act

in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2.a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.--

(1) Those portions of any meeting which would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act, in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) A meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b)1. A complete recording shall be made of any meeting made exempt in paragraph (a). No portion of the meeting may be held off the record.

2. The recording required under subparagraph 1. is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

3. If the agency rejects all sealed replies, the recording remains exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the

agency withdraws the reissued invitation to negotiate. A recording is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. (1) The Legislature finds that it is a public necessity that sealed bids or proposals submitted in response to an invitation to bid or request for proposals that are rejected by an agency be made temporarily exempt from public records requirements if the agency concurrently provides notice of its intent to reissue the invitation to bid or request for proposals. Such records shall be made available when the agency provides notice of a decision or intended decision, as required under the Administrative Procedure Act, or if the agency withdraws the reissued invitation to bid or request for proposals. Temporarily protecting such information ensures that the process of invitations to bid and requests for proposals remains economical and equitable, while still preserving oversight after an agency decision is made.

(2) The Legislature further finds that it is a public necessity that a competitive sealed reply in response to an invitation to negotiate be made temporarily exempt from public records requirements. In addition, a competitive sealed reply in response to an invitation to negotiate which is rejected by an agency should be made temporarily exempt from public records requirements if the agency concurrently provides notice of its

intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate. Such reply will be made available when the agency provides notice of a decision or intended decision, as required under the Administrative Procedure Act, or if the agency withdraws the reissued invitation to negotiate. Temporarily protecting such reply ensures that the process of invitations to negotiate remains economical and equitable, while still preserving oversight after an agency decision is made.

(3) Additionally, the Legislature finds that it is a public necessity that a meeting at which a negotiation with a vendor is conducted pursuant to s. 287.057(3), Florida Statutes, be made exempt from public meetings requirements. Protecting such meetings ensures that the process of invitations to negotiate remains economical and equitable, while still preserving oversight after an agency decision is made through the requirement that a complete recording be made of those meetings. Furthermore, the recording of that closed portion of the meeting must be made temporarily exempt from public records requirements in order to preserve the purpose for the public meetings exemption. In addition, it is unfair and inequitable to compel vendors to disclose during the negotiation process the nature and details of their offers to competitors and to others beyond the agency. Further, the Legislature finds that such disclosure impedes full and frank discussion of the strength, weakness, and value of an offer, thereby limiting the agency's ability to obtain the best value for the state. The Legislature

also finds that it is unfair and inequitable to publicly discuss and otherwise disclose negotiation strategies, assessment of vendors' offers or positions, or the nature or details of offers. The public and private harm stemming from these practices outweighs the temporary delay in making meetings and records related to the negotiation process open to the public.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435 Division of Emergency Management of the Department of Community Affairs
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) State Administration Appropriations Committee	7 Y, 0 N	Dobbs	Belcher
3) State Administration Council		Brown	Bussey
4)			
5)			

SUMMARY ANALYSIS

This bill provides for a codified direct operational relationship between the Governor and the Division of Emergency Management in carrying out the responsibilities of Chapter 252, F.S., related to Emergency Management. The bill provides the division with autonomy for matters involving personnel, purchasing, and budget.

The bill appears to have no fiscal impact.

The bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Division of Emergency Management to enter into a service agreement with the Department of Community Affairs.

B. EFFECT OF PROPOSED CHANGES:

Structure of Executive Branch

Article IV, Section 1 of the Florida Constitution vests the Governor with supreme executive power. Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (DEM) as one of the department's units.[1] The State Emergency Management Act[2] also serves as an establishing clause for the DEM. Chapter 252, F.S., tasks the DEM with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.[3]

Statutorily, the operational and administrative chain of command typically flows from the Governor through the Secretary of the Department of Community Affairs to the Director of the Division of Emergency Management. However, under Chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[4] In the event of an emergency beyond the capabilities of local authorities, the Governor may assume direct operational control over all or any part of the emergency management functions within this state. The Governor is authorized to delegate such powers as she or he may deem prudent.[5]

Chapter 252, F.S., assigns responsibility to the Division of Emergency Management for maintaining a comprehensive statewide program of emergency management. This program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Florida Emergency Management Act.[6]

In an emergency that is beyond the capability of local authorities, the Governor determines the need to declare a state of emergency. This declaration takes the form of an Executive Order that describes the emergency condition, issues orders, assigns missions, and may delegate certain authority.[7]

For example, Executive Order 05-219[8] declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the DEM as the State Coordinating Officer for the duration of the emergency. The Director was authorized to act as the Governor's

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[1] Section 20.18(2)(a), F.S.
[2] Chapter 252, F.S.
[3] Section 252.32(2), F.S.
[4] See generally s. 252.36, F.S.
[5] Section 252.36(1)(a), F.S.
[6] Section 252.35, F.S.
[7] Section 252.36, F.S.
[8] Available online here: http://sun6.dms.state.fl.us/eog_new/eog/orders/2005/October/05-219-wilma.pdf.

authorized representative and instructed to confer with the Governor to the fullest extent possible. The Director was specifically authorized to:

- Activate the Comprehensive Emergency Management Plan;
- Invoke and administer the Statewide Mutual Aid Agreement;
- Invoke and administer the Emergency Management Assistance Compact;
- Seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- Distribute any and all supplies stockpiled to meet the emergency;
- Direct all state, regional and local government agencies, including law enforcement agencies, to identify needed personnel and place them under the direct command of the State Coordinating Officer to meet the emergency; and
- Perform other duties relating to the management of the emergency.

As a result of this and other executive orders, the Governor and the Director of DEM (acting as the State Coordinating Officer) have a direct operational link when operating under an executive order declaring an emergency.

Proposed Changes

The bill requires the Director of the DEM to be appointed by and serve under the direct oversight of the Governor in carrying out the responsibilities of chapter 252, F.S. The bill makes the DEM a budget entity separate from the DCA, with complete autonomy in matters involving personnel, purchasing, and budget while remaining an established unit of the DCA.

The bill requires the DEM to enter into a service agreement with the DCA for "professional, technological, and administrative support services." The bill also requires the DEM to collaborate and coordinate with the department on non-emergency response matters such as recovery programs, grant programs, mitigation programs, and emergency matters relating to comprehensive plans.

C. SECTION DIRECTORY:

Section 1 amends s. 20.18, F.S., to operationally segregate the DEM from the DCA except for administrative purposes.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DCA reports that the bill will have no fiscal impact, as the changes "codify the existing relationship."[9]

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The DEM currently performs administration of this trust fund within the DCA. This bill does not appear to conflict with section 252.371, F.S., since the DEM will remain statutorily a unit of the DCA. Further, the bill specifies that the DEM will collaborate and coordinate with the DCA on such matters as grant programs. Emergency management grants and aids to local governments and non-state entities as well as other related programs are funded through this trust fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill provides that the division director of the Division of Emergency Management will be appointed by the Governor. Currently, the division director is employed by the Secretary of the Department of Community Affairs, who is the head of that department. Further, the bill provides that the division will no longer be subject to the control, supervision, or direction of the department. If this change creates an independent entity of the executive branch, it could be interpreted as altering the division director's position from an "employee" to an "officer." If this is the case, the provisions of Art. IV, s. 6 of the State Constitution may apply. That section provides:

> All functions of the executive branch of state government shall be allotted among not more than twenty-five departments...The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, *except: (a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office...* [emphasis added.]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[9] *2006 Bill Policy Analysis, HB-1435*, Florida Department of Community Affairs.

A bill to be entitled

An act relating to the Division of Emergency Management of the Department of Community Affairs; amending s. 20.18, F.S.; providing that the director of the Division of Emergency Management shall be appointed by and serve under the oversight of the Governor; providing that the division shall be a separate budget entity and not subject to the control, supervision, or direction of the Department of Community Affairs in matters involving personnel, purchasing, and the budget of the division; authorizing the division to enter into a service agreement with the department for professional, technological, and administrative support services; requiring the division to collaborate and coordinate with the department on all nonemergency response matters; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 20.18, Florida Statutes, is amended to read:

20.18 Department of Community Affairs.--There is created a Department of Community Affairs.

(2) The following units of the Department of Community Affairs are established:

(a) Division of Emergency Management. The director of the Division of Emergency Management shall be appointed by and shall serve under the oversight of the Governor in carrying out the

responsibilities of chapter 252. The division shall be a separate budget entity and not subject to the control, supervision, or direction of the department in matters involving personnel, purchasing, and the budget of the division. The division shall enter into a service agreement with the department for professional, technological, and administrative support services. The division shall collaborate and coordinate with the department on all nonemergency response matters, including, but not limited to, disaster recovery programs, grant programs, mitigation programs, and emergency matters related to comprehensive plans.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 1435**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Harrell offered the following:

Amendment (with title amendment)

Remove line(s) 26-39 and insert:

(a) Division of Emergency Management. The division is a separate budget entity and is not subject to control, supervision, or direction by the Department of Community Affairs in any manner, including, but not limited to, personnel, purchasing, transactions involving personal property, and budgetary matters. The division director shall be appointed by the Governor, shall serve at the pleasure of the Governor, and shall be the agency head of the division for all purposes. The division shall enter into a service agreement with the department for professional, technological, and administrative support services. The division shall collaborate and coordinate with the department on nonemergency response matters, including, but not limited to, disaster recovery programs, grant programs, mitigation programs, and emergency matters related to comprehensive plans.

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Amendment No. (for drafter's use only)

22

23 ========== T I T L E A M E N D M E N T ==========

24 Remove line(s) 5-15 and insert:

25 Emergency Management be designated as agency head of the

26 division; providing that the director be appointed by the

27 Governor; providing that the division is a separate budget

28 entity, not subject to control by the department; providing for

29 an agreement between the division and department for certain

30 services; prescribing duties of the division; providing an

31 effective

32

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 CS Licensing
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
3) State Administration Council		Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill expands the written notice an agency is required to give an applicant when they intend to grant or deny, or has granted or denied, an application for licensure to include the citations to the applicable rule, statute, or both for the issuance or the denial.

The bill also requires counties and municipalities to give written notice to an applicant when denying an application for a development permit. This written notice must also state the grounds or basis for the denial, with citation to the applicable ordinance or other legal authority.

This bill may impact the existing caselaw on written findings for certain types of land use decisions.

This bill does not appear to create, modify, or eliminate rulemaking authority.

There does not appear to be a fiscal impact on state or local government revenues. State agencies, counties, and municipalities may need to update their applicable rules, ordinances, or processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the information provided to applicants when granted or denied a license by the state, counties, and municipalities.

B. EFFECT OF PROPOSED CHANGES:

This bill affects licensing under the Administrative Procedure Act and the denial of development permits by counties and municipalities.

"Licensing" under the Administrative Procedure Act

Chapter 120, Florida Statutes, is the Administrative Procedure Act (APA). The APA applies to "agencies." The term "agencies" includes the Governor,[1] state officers, state departments, departmental units,[2] authorities, regional water supply authorities, boards, commissions,[3] regional planning agencies, educational units, and other specified entities.[4]

The APA defines the term "license" to include: a franchise, permit, certification, registration, charter, or similar form of authorization required by law.[5] This definition, however, excludes any license that is issued primarily for revenue purposes when issuance of the license is merely a ministerial act.[6] The APA has provisions which specifically relate to licensing and place certain requirements on agencies:

- Examine any application for a license upon receipt, notify the applicant of any apparent errors or omissions within 30 days, and request any additional information the agency required by law;[7]
- Consider an application complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired;[8]
- Approve or deny every application for a license within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law;[9]

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[1] Fla. Stat. § 120.52(1)(a) (2005) (while the Governor is exercising all executive powers other than those derived from the Florida Constitution).
[2] Fla. Stat. § 120.52(1)(b)1. (2005) (as described in section 20.04, Florida Statutes).
[3] Fla. Stat. § 120.52(1)(b)4. (2005) (including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature).
[4] Fla. Stat. § 120.52(1)(b)8. (2005) (This includes entities described in chapters 163 [Intergovernmental Programs], 373 [Water Resources], 380 [Land and Water Management], and 582 [Soil and Water Conservation Districts], Florida Statutes, and section 186.504 [Regional Planning Councils], Florida Statutes. Agency does not include legal entities created pursuant to part II of chapter 361 [Joint Electric Power Supply Projects], Florida Statutes, metropolitan planning organizations, separate legal or administrative entities which include metropolitan planning organizations, expressway authorities, legal or administrative entities created pursuant to an interlocal agreement unless a party is otherwise subject to the APA.).
[5] Fla. Stat. § 120.52(9) (2005).
[6] Fla. Stat. § 120.52(9) (2005).
[7] Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).
[8] Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).
[9] Fla. Stat. § 120.60(1) (2005) (Any application for a license that is not approved or denied within the 90-day or other shorter time period required by law, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.).

- Notify any applicant seeking a license for an activity that is exempt from licensure and return any application fee within 30 days after receipt of the original application; and[10]

- Provide written notice, either personally or by mail, that the agency intends to grant or deny an application for license and state with particularity the grounds or basis for the issuance or denial of the license.[11]

The licensing provisions of the APA also apply to licenses which do not automatically expire by statute;[12] the revocation, suspension, annulment, or withdrawal of licenses; and emergency suspensions, restrictions, or limitations of a license.

Changes to Licensing Under the APA

This bill creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure. In addition to stating with particularity the grounds or basis for the issuance or denial of a license, the bill requires the written notice to also include a citation to the applicable rule, statute, or both if applicable.

Licensing by Counties and Municipalities

The APA applies to certain local government entities such as multicounty special districts with a majority of its governing board comprised of nonelected persons.[13] The APA also applies to counties and municipalities to the extent they are *expressly* made subject to the APA by general or special law or existing judicial decisions.[14] Most licensing decisions of counties and municipalities have not, however, been made subject to the APA. As such, most licensing by counties and municipalities, including development permits, is controlled by ordinances, judicial decisions, and other applicable statutes.[15]

Development Permits by Counties and Municipalities

In general, a development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[16] The authority to issue development permits is part of the "home rule" power of charter counties[17] and municipalities.[18] It is also, for non-charter counties in particular, an essential component of the authority to prepare, implement, and enforce comprehensive plans as well as the authority to establish, coordinate, implement, and enforce zoning ordinances.[19]

There is, however, an important judicial distinction between establishing a comprehensive plan or zoning ordinance, and its implementation through the development permit process. Establishing a comprehensive plan or zoning ordinance is the formulation of a general rule of policy and is a legislative action.[20] The decision to grant or deny development permits in implementing the

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[10] Fla. Stat. § 120.60(2) (2005).
[11] Fla. Stat. § 120.60(2) (2005) (This notice must further inform the applicant of the basis for the agency decision, of any administrative hearing or judicial review which may be available, of the procedure which must be followed, and of any applicable time limits.).
[12] Fla. Stat. § 120.60(3) (2005).
[13] Fla. Stat. § 120.52(1) (2005).
[14] Fla. Stat. § 120.52(1)(c) (2005).
[15] *See, e.g.,* Fla. Stat. § 553.792 (2005) (providing response timeframes for local governments for certain building permit applications).
[16] *See, e.g.,* Fla. Stat. §§ 163.3164(8) and 163.3221(5) (2005).
[17] Fla. Const. art VIII, § 1(g) (Counties operating under charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.).
[18] Fla. Const. art. VIII, § 2(b) (Muncipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as provided by law.).
[19] *See, e.g.,* Fla. Stat. § 125.01(g) and (h) (2005).
[20] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

comprehensive plan or zoning ordinance generally is the application of a general rule of policy and is a "judicial" or quasi-judicial action.[21]

The distinction between legislative and quasi-judicial action determines the type of review or deference that courts will give the action. Legislative actions, for example, will be sustained as long as they are fairly debatable.[22] Quasi-judicial actions, by contrast, are subject to review as to whether there was strict compliance with the comprehensive plan or zoning ordinance.[23]

Quasi-judicial Actions

Quasi-judicial action on most development permits is unique in that it is one of three types of actions that qualify for an extraordinary review by a court known as the common law writ of certiorari.[24] In the first tier of certiorari review, the circuit court reviews *the record* to determine whether the decision was supported by competent and substantial evidence.[25] The Florida Supreme Court has declined to require *findings of fact* by local governments as part of this quasi-judicial record.[26] Yet, the Florida Supreme Court noted that this decision has been called into question and directed the Rules of Judicial Administration Committee of the Florida Bar to study whether to require written final decisions with detailed findings of fact in local land use actions that are subject to review in the courts.[27] The Rules of Judicial Administration Committee ultimately recommended that the Florida Supreme Court not adopt such a rule because it violates the separation of powers between the judicial and executive branches.[28]

Findings of Fact Arguments

To assist the Rules of Judicial Administration Committee in its deliberations, an ad hoc committee of the Environmental and Land Use Law Section of the Florida Bar provided a memorandum which recommended against the adoption of such a rule because it would encroach upon the authority of the legislative branch; that is, the Florida Constitution grants authority over local governments to the legislative branch and local governments are not "courts" for purposes of adopting rules for procedure and practice as required by article V, section 2(a) of the Florida Constitution.[29] The ad hoc committee was divided as to whether the court should require written final decisions with detailed findings of fact as a matter of constitutional due process of law.[30] The ad hoc committee presented both of these perspectives.

Among the arguments presented in support of due process requiring written findings in quasi-judicial decisions: enables the proper certiorari review and ensures rationality; serves as both the starting point and guideposts for the circuit court's review; exposes "decisional referents;" reverses the radical

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[21] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[22] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[23] *See, e.g., Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).
[24] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 842 ("The common law writ of certiorari is a special mechanism whereby an upper court can direct a lower tribunal to send up the record of a pending case so that the upper court can 'be informed of' events below and evaluate the proceedings for regularity. The writ functions as a safety net and gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists. The writ is discretionary and was intended to fill the interstices between direct appeal and the other prerogative writs. The writ never was intended to redress mere legal error, for common law certiorari--above all--is an extraordinary remedy, not a second appeal." The court further noted this type of action is not subject to review under the APA and that legislative actions are not reviewable via certiorari).
[25] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, at 845 (Fla. 2001); *see also id.* at 843 (If further certiorari review is granted, the district court of appeal reviews the circuit court's judgment to determine whether the circuit court afforded procedural due process and applied the correct law).
[26] *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 476 (Fla. 1993).
[27] *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 846 (Fla. 2001).
[28] Letter from the Chair, Rules of Judicial Admin. Committee, Fla. Bar, to the Clerk of Court, Fla. Supreme Court (Jan. 18, 2002).
[29] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).
[30] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).

alteration in the review of quasi-judicial decisions; returns a fundamental aspect of judicial review which no data suggest was an undue burden to communities; and benefits identifiably affected parties.[31]

Among the arguments presented against due process requiring written findings in quasi-judicial decisions: limits local discretion to choose from a range of legally permissible options; interferes with the ability of local officials to represent their constituents; does not necessarily improve the quality of decision-making; unnecessarily complicates circuit court review; and increases the likelihood of violating separation of powers.[32]

These arguments serve as background for requiring written findings and have implications for any other type of written notice.

Written Notice of Denial

This bill does not require written findings, but does require written notice stating the grounds or basis for the denial of the permit, with citation to the applicable ordinance or other legal authority to the applicant when a county or municipality denies an application for a development permit.

C. SECTION DIRECTORY:

Section 1: Amends subsection (3) of section 120.60, Florida Statutes, to require a citation to the applicable rule when giving notice of its decision to deny or issue a license.

Section 2: Creating section 125.022, Florida Statutes, to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.

Section 3: Creating section 166.033, Florida Statutes, to require a municipality to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.

Section 4: Providing for the bill to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   State agencies may need to update their rules and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[31] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001) (citing Thomas G. Pelham, *Rezonings: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Envtl. L. 243 and T.R. Hainline & Steven Diebenow, *Synder House Rules? The New Deference in the Review of Quasi-Judicial Decisions*, 74 Fla. B. J. 53 (Nov. 2000)).

[32] Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Counties and municipalities may need to update their ordinances and processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, these expenditures do not appear to be significant enough to trigger the constitutional provisions related to the mandated expenditure of funds.[33]

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority. Yet, the bill will likely require agencies to revise their current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of Development Permit

"Development permit" does not appear to be defined in chapters 125 or 166, Florida Statutes. The sponsor may wish to add an amendment to provide a definition or reference a definition elsewhere in the statutes.[34]

[33] Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

[34] *See, e.g.,* Fla. Stat. §§ 70.51(2)(b), 163.3164(8), 163.3221(5), 288.109(3), and 380.031(4) (2005).

Written Notice versus Written Findings

The bill requires and sets forth requirements for the written notice. It is not clear, however, how this written notice comports with the current caselaw on written findings. The Senate version of the bill currently contains a provision which sets forth the requirements of the written notice when the denial is the result of a quasi-judicial proceeding, specifying the notice is not required to contain findings of fact or conclusions of law. The sponsor may wish to consider a similar provision or otherwise clarify the relationship between written notices and written findings.

Timing of Written Notice

The bill does not currently specify *when* the written notice must be given to the applicant. It also is not clear what effect, if any, this written notice has on the timing of any applicable appellate rights. The sponsor may wish to further address these issues.

Results of Noncompliance by Local Governments

The bill does not currently provide any penalty for non-compliance. As such, it is unknown whether the remedy for failure by a county or municipality to provide the required notice results in approval or only serves to stay the denial until the requirements are met. The sponsor may wish to add procedures similar to those in section 120.60, Florida Statutes, which provide additional detail related to non-compliance for certain requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted a substitute amendment that revised the definition of "license," further detailed the requirements of the written notice for state "agencies," and limited the scope and applicability of the required written notice for counties and municipalities to denial of an application for a development permit.

The Council on Local Government adopted one amendment on April 19, 2006. The amendment removes the change made to the definition of license under the Administrative Procedure Act.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute
Remove the entire bill and insert:

A bill to be entitled

An act relating to the issuance of licenses and development permits; amending s. 120.60, F.S.; requiring that a state agency include a citation to the applicable rule or statute when giving notice of the decision to issue or deny a license; creating s. 125.022, F.S.; requiring a county to give written notice of the decision to deny a development permit; requiring that the notice include a citation to the applicable ordinance; creating s. 166.033, F.S.; requiring a municipality to give written notice of the decision to deny a development permit; requiring that the notice include a citation to the applicable ordinance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 120.60, Florida Statutes, is amended to read:

120.60 Licensing.--

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis, including a citation to the applicable rule, statute, or both, if applicable, for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has requested notice of agency action. Each notice shall inform the recipient of the basis for the agency decision, shall inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, shall indicate the procedure which must be followed, and shall state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification shall be filed with the agency clerk.

Section 2. Section 125.022, Florida Statutes, is created to read:

125.022 Development permits.--When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must state the grounds or basis, with citation to the applicable ordinance or other legal authority, for the denial of the development permit.

Section 3. Section 166.033, Florida Statutes, is created to read:

166.033 Development permits.--When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must state the grounds or basis, with citation to the applicable ordinance or other legal authority, for the denial of the development permit.

Section 4. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1447 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Reagan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 125.022, Florida Statutes, is created to read:

125.022 Development permits.--When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

Section 2. Section 166.033, Florida Statutes, is created to read:

166.033 Development permits.--When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the

denial of the permit. As used in this section, the term "development permit" has the same meaning as in s. 163.3164.

Section 3. This act shall take effect October 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

An act relating to the denial of development permits; creating s. 125.022, F.S.; requiring a county to give written notice of its decision to deny a development permit; specifying information that the notice must include; defining the term "development permit"; creating s. 166.033, F.S.; requiring a municipality to give written notice of its decision to deny a development permit; specifying information that the notice must include; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1563 CS Public Records
SPONSOR(S): Kendrick and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Judiciary Appropriations Committee	(W/D)		
3) State Administration Council		Mitchell	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

The bill shields the clerk of the circuit court and county recorders from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, in certain records filed on or before January 1, 2008.

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.

The bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to have an impact on state or local government revenues, but may have a minimal fiscal impact on the expenditures of state and local governments for implementation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill shields the clerk of the circuit court or county recorder from liability for the inadvertent release of certain confidential and exempt information.

B. EFFECT OF PROPOSED CHANGES:

Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.[1]

Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law.[2] This general law must "state with specificity the public necessity justifying the exemption" and be "no broader than necessary to accomplish the stated purpose of the law."[3] The Legislature has created numerous public records exemptions.

Public Records Exemptions for Social Security Numbers and Account Information

In 2002, the Legislature created a public records exemption for all social security numbers held by an agency[4] that did not have an agency-specific exemption for social security numbers.[5] In 2002, the Legislature also recreated[6] a public records exemption for bank account numbers, debit, charge and credit card numbers held by an agency.[7] The Legislature also created a number of exceptions for these exemptions. One of those exceptions related to court records; another exception related to documents presented to the county recorder for recording in the official records of the county.

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[1] Fla. Stat. § 119.07(1)(a) (2005).
[2] Fla. Const. art. 1, § 24.
[3] *Id.*
[4] Fla. Stat. § 119.011(2) (2005) (defining "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency").
[5] Ch. 2002-256, Laws of Fla.
[6] A previously existing exemption repealed on October 1, 2001. *See* Fla. Stat. § 119.07(3)(z) (2000).
[7] Ch. 2002-257, Laws of Fla.

Court Records and Official Records Exceptions

In 2002, the Legislature allowed social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a court file, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.[8] The Legislature provided the ability for a person to request the redaction of this information.[9]

In 2002, the Legislature also permitted social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a document presented to the county recorder for recording in the official records of the county, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.[10] The Legislature also prohibited any person who prepares or files a document to be recorded in the official records by the county recorder from including a person's social security number or complete bank account, debit, charge, or credit card number in that document unless expressly required by law.[11]

In 2005, the Legislature delayed until January 1, 2007, the requirements for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.[12]

Further Delay

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

Liability Shields

The bill shields the clerk of the circuit court from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were in court records filed with the clerk of the circuit court on or before January 1, 2008, and which were unknown to the clerk of the circuit court.

The bill also shields the county recorder from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were filed with the county recorder on or before January 1, 2008.

County Recorders and Electronic Records

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

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[8] Ch. 2002-391, Laws of Fla. This exception was originally created as paragraph (ff) of subsection (3) of section 119.07, Florida Statutes. This exception was later paragraph (gg) of subsection (6) of section 119.07, Florida Statutes.

[9] Fla. Stat. § 119.071(5)(a)7.d. (2005) (requiring the holder of the social security number or complete bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, to submit a signed, legibly written request that is delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court and specifies the case name, case number, document heading, and page number).

[10] Ch. 2002-391, Laws of Fla., *supra* note 8.

[11] *Id.*

[12] Ch. 2005-236, Laws of Fla., § 41. *See also* ch. 2005-251, Laws of Fla., § 24 (which transferred and redesignated paragraph (gg) of subsection (6) of section 119.07, Florida Statutes, to section 119.071(5)(a), Florida Statutes).

Stylistic Changes

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.[13]

C. SECTION DIRECTORY:

Section 1: Amends section 119.071, Florida Statutes, to limit the liability of the clerk of the circuit court and the county recorder; to require the clerk of the circuit court to make certain notices; and to require best efforts in redaction.

Section 2: Reenacting section 1007.35(8)(b), Florida Statutes, to incorporate amendments.

Section 3: Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill may have a fiscal impact on local government expenditures because the staffs of the clerk of the circuit court or county recorder who are responsible for complying with public records requests will require training relating to the newly created public records exemption. There will also be costs to notify the public of these changes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[13] One example is "shall not" to "may not."

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill may require counties, through the clerks of the circuit court or county recorders, to spend funds or to take an action requiring the expenditure of funds, the amount of this expenditure is expected to be fiscally insignificant.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Unknown to the Clerk of the Circuit Court

Rather than using the phrase "unknown to the Clerk of the Circuit Court," the sponsor may wish to consider referencing the request for redaction as the basis for whether the Clerk of the Circuit Court has knowledge.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, a proposed committee substitute was adopted by the Governmental Operations Committee and the bill was reported favorably with committee substitute.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; revising the date until which a confidential and exempt social security number or an exempt complete bank account, debit, charge, or credit card number included in a court file may be included as part of a court record available for public inspection and copying unless redaction is requested; providing that the clerk of the circuit court has no liability for the inadvertent release of certain confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers; revising the date until which a social security number or a complete bank account, debit, charge, or credit card number included in a document presented to the county recorder for recording in the official records of the county may be made available as part of the official record available for public inspection and copying; requiring the county recorder to use his or her best

efforts to redact all social security numbers and complete bank account, debit, charge, or credit card numbers from electronic copies of official records documents; providing that the county recorder is not liable for the inadvertent release of certain confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers; revising the date on which the clerk of the circuit court and the county recorder must commence keeping complete bank account, debit, charge, and credit card numbers exempt and must commence keeping social security numbers confidential and exempt without any person having to request redaction; making editorial changes; reenacting s. 1007.35(8)(b), F.S., relating to access to information necessary to evaluate the effectiveness of delivered services from the Florida Partnership for Minority and Underrepresented Student Achievement, to incorporate the amendments made to s. 119.071, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(5) OTHER PERSONAL INFORMATION.--

(a)1. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes. The Legislature is also cognizant of the fact that the social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. The Legislature intends to monitor the commercial use of social security numbers held by state agencies in order to maintain a balanced public policy.

2. An agency may ~~shall~~ not collect an individual's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and may ~~shall~~ not be collected until and unless the need for social security numbers has been clearly documented. An agency that collects social security numbers shall also segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number be more easily redacted, if required, pursuant to a public records request. An agency collecting a person's social security

number shall, upon that person's request, at the time of or prior to the actual collection of the social security number by that agency, provide that person with a statement of the purpose or purposes for which the social security number is being collected and used. Social security numbers collected by an agency may ~~shall~~ not be used by that agency for any purpose other than the purpose stated. Social security numbers collected by an agency before ~~prior to~~ May 13, 2002, shall be reviewed for compliance with this subparagraph. If the collection of a social security number before ~~prior to~~ May 13, 2002, is found to be unwarranted, the agency shall immediately discontinue the collection of social security numbers for that purpose.

3. Effective October 1, 2002, all social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to all social security numbers held by an agency before, on, or after the effective date of this exemption.

4. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of the ~~such~~ numbers.

5. An agency may ~~shall~~ not deny a commercial entity engaged in the performance of a commercial activity as defined in s. 14.203 or its agents, employees, or contractors access to social security numbers, provided the social security numbers will be used only in the normal course of business for

legitimate business purposes, and provided the commercial entity makes a written request for social security numbers, verified as provided in s. 92.525, legibly signed by an authorized officer, employee, or agent of the commercial entity. The verified written request must contain the commercial entity's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the normal course of business for legitimate business purposes. The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 8. An agency may request any other information reasonably necessary to verify the identity of the entity requesting the social security numbers and the specific purposes for which the ~~such~~ numbers will be used; however, an agency has no duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.

6. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Any public officer who violates this paragraph is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. A commercial entity that provides access to public records containing social security numbers in accordance with this paragraph is not subject to the penalty provisions of this subparagraph.

7.a. On or after October 1, 2002, a person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28 may not include any person's social security number in that document, unless otherwise expressly required by law. If a social security number is or has been included in a document presented to the county recorder for recording in the official records of the county before, on, or after October 1, 2002, it may be made available as part of the official record available for public inspection and copying.

b. Any person, or his or her attorney or legal guardian, has the right to request that a county recorder remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public by such recorder, his or her social security number contained in that official record. The ~~Such~~ request must

be made in writing, legibly signed by the requester and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. The county recorder has no duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may ~~shall~~ not be charged for the redaction of a social security number pursuant to such request.

c. A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post, on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

(I) On or after October 1, 2002, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

(II) Any person has a right to request a county recorder to remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic

transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A ~~No~~ fee may not ~~will~~ be charged for the redaction of a social security number pursuant to such a request.

d. Until January 1, 2008 ~~2007~~, if a social security number, made confidential and exempt pursuant to this paragraph, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (b) is or has been included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number, or by the holder's attorney or legal guardian, in a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court. The clerk of the circuit court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request. The clerk of the circuit court has no liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, unknown to the clerk of the circuit court in court records filed with the clerk of the circuit court on or before January 1, 2008.

e. Any person who prepares or files a document to be recorded in the official records by the county recorder as provided in chapter 28 may not include a person's social security number or complete bank account, debit, charge, or credit card number in that document unless otherwise expressly required by law. Until January 1, 2008 ~~2007~~, if a social security number or a complete bank account, debit, charge, or credit card number is or has been included in a document presented to the county recorder for recording in the official records of the county, such number may be made available as part of the official record available for public inspection and copying. Any person, or his or her attorney or legal guardian, may request that a county recorder remove from an image or copy of an official record placed on a county recorder's publicly available Internet website, or a publicly available Internet website used by a county recorder to display public records outside the office or otherwise made electronically available outside the county recorder's office to the general public, his or her social security number or complete account, debit, charge, or credit card number contained in that official record. Such request must be legibly written, signed by the requester, and delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the document that contains the number to be redacted. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for redacting such numbers. If the county recorder accepts or stores

official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction shall be deemed the best effort and complies with the requirements of this sub-subparagraph. The county recorder is not liable for the inadvertent release of confidential and exempt social security numbers, or exempt bank account, debit, charge, or credit card numbers, filed with the county recorder on or before January 1, 2008.

f. Subparagraphs 2. and 3. do not apply to the clerks of the court or the county recorder with respect to circuit court records and official records.

g. On January 1, 2008 ~~2007~~, and thereafter, the clerk of the circuit court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (b), and must keep social security numbers confidential and exempt as provided for in subparagraph 3., without any person having to request redaction.

8. Beginning January 31, 2004, and each January 31 thereafter, every agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives listing the identity of all commercial entities that have requested social security numbers during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding its need for social

security numbers. If no disclosure requests were made, the agency shall so indicate.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

10. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

11. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. For the purpose of incorporating the amendments made by this act to section 119.071, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 1007.35, Florida Statutes, is reenacted to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.--

(8)

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.071(5)(a), to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in

a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

PCB #: HB 7121 CS PCB DS 06-02 Disaster Preparedness, Response, and Recovery
SPONSOR(S): Domestic Security Committee, Adams and others
TIED PCBS: **IDEN./SIM. PCBS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Domestic Security Committee	9 Y, 0 N	Wiggins	Newton
1) Agriculture Committee	10 Y, 0 N	Kaiser	Reese
2) Finance & Tax Committee	6 Y, 0 N, w/CS	Noriega	Diez-Arguelles
3) Fiscal Council	17 Y, 0 N, w/CS	Darity	Kelly
4) State Administration Council		Wiggins	Bussey
5)			

SUMMARY ANALYSIS

The bill creates the Florida Disaster Supplier Program Council (council). The council consists of seven members, comprised of one county emergency management director from each of the seven Division of Emergency operational regions as designated by the Florida Emergency Preparedness Association. The council is tasked with developing specific criteria for the voluntary Florida Disaster Supplier Program by February 1, 2007. The purpose of this program is to facilitate access to supplies during an emergency and to inform state residents of the availability of crucial supplies before, during, and after a disaster.

The bill creates the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs. The program allows motor fuel retail outlets doing business in the state to participate in a network of emergency responders to provide fuel supplies and services to government agencies, medical institutions and facilities, critical infrastructure and other responders, as well as the general public before, during, and after a disaster.

The bill requires all multi-family dwellings that are at least 75 feet high and contain a public elevator, to have at least one public elevator that is capable of operating on an alternate power source available to residents for a number of hours each day over a 5-day period following a disaster.

The bill specifies that the statewide public disaster awareness campaign must include information on personal responsibility for individual citizens for up to 72 hours following a disaster. The campaign must also promote statewide disaster plans, evacuation routes, fuel suppliers, and shelter information. In addition, the materials must be available in alternative formats and mediums to ensure they are available to persons with disabilities.

The bill provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space. The bill also appropriates:

- $28.6 million for improvements to emergency operation centers.
- $6.5 million to increase storage capacity; improve technologies to manage commodities; and enhance the ability to maintain an inventory of supplies, equipment and commodities that would be needed immediately after a disaster.
- $29 million to provide new technology and tools to improve the understanding of storm surges and update regional evacuation plans.
- $76,150 to fund the Florida Disaster Supplier Program Council and $3.4 million to fund a public awareness campaign.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: The bill provides for the creation of a program that will empower businesses to operate during a disaster. The program will provide options to individuals when obtaining supplies and fuel to maintain normalcy before, during, and after a disaster.

Promote Personal Responsibility: The bill clarifies that one of the goals of the public educational campaign on emergency preparedness issues is to promote the self-sufficiency of citizens for up to 72 hours following a disaster. The bill encourages the public to make arrangements for the care of individuals with special needs or in need of assistance, to be familiar with evacuation routes, disaster plans, shelter information, and fuel and consumer suppliers.

Empower Families: The bill decreases the burdens of government on families by providing options to obtain needed supplies for their families during a disaster. The bill provides families choices when making crucial decisions that will affect their safety and well-being during a disaster. The bill decreases the dependence of families on government support and/or assistance by educating the public regarding disaster preparedness. The public awareness program will specifically encourage families to prepare for disasters and review evacuation plans, thus increasing family stability.

Maintains Public Security: The bill increases the physical security of citizens and their property by providing citizens with options during disasters. These options will help families secure their homes and businesses. The Florida Disaster Motor Fuel Supplier Program assists health care facilities by enabling them to remain operational during a disaster and by assisting critical care workers to obtain fuel so they may return to work. If health care centers are able to remain operational, law enforcement may devote its time and energy to public security and disaster needs, such as recovery and rescue.

B. EFFECT OF PROPOSED CHANGES:

Background

The 2004 and 2005 hurricane seasons, specifically the devastation left from Hurricanes Wilma and Katrina, raised a number of issues across Florida on disaster preparedness, response and recovery. In an effort to better understand the issues specific to Florida's ability to deal with and recover from disasters, the Domestic Security Committee and the Health Care General Committee held two joint committee meetings to hear testimony and take comments on disaster-related issues. In conjunction with the Health Care General Committee's bill on special needs sheltering, the Domestic Security Committee has addressed areas of concern related to emergency supplies, availability of motor fuels, and disaster preparedness.

Effect of the Bill

Florida Disaster Supplier Program and the Florida Disaster Supplier Program Council
At present, supplies to communities are provided through government agencies and private assistance following a disaster. Businesses that are able to maintain power during a disaster or have an alternate power source may sell their goods and services. There are no identified State Emergency Response Team (SERT) businesses that provide needed supplies and fuel to the public and SERT members following a disaster. There are no provisions that allow SERT members and critical care health providers to acquire fuel during a disaster.

The Florida Disaster Supplier Program Council (council) is established within the Department of Community Affairs to make recommendations to the Governor and Legislature on the creation of a voluntary Florida Disaster Supplier Program. The council consists of seven members, one from each of the operational regions of the Division of Emergency Management (division). The bill sets forth criteria for the council relating to:

- Election of a chair and vice chair;
- When the council shall meet;
- Duration of service;
- Vacancies on the council;
- Compensation for service; and
- Termination of the council as of July 1, 2008.

The duties and responsibilities of the council include recommending to the division:

- State disaster preparedness criteria necessary for implementation of this program;
- The most effective means of providing access to businesses partnering in this program to facilitate the operation, supply, and staffing of such businesses, as feasible, under emergency situations;
- A statewide system of certification during a disaster for suppliers of pharmaceuticals, food and water, building supplies, ice, and other categories deemed necessary by the council;
- If deemed necessary by the council, the assessment of an annual program membership fee for businesses voluntarily seeking to obtain certification as a state disaster supplier; and
- A State Emergency Response Team (SERT) logo bearing the name of the state of Florida and the type of supplies being provided by the supplier for display by businesses participating in this program.

The intended purposes of this program are:

- To provide statewide oversight of the availability and provision of necessary supplies prior to, during, and following a state of emergency or natural or manmade disaster or catastrophe;
- To assist in the rapid recovery of an area affected by a natural or manmade disaster or catastrophe and to immediately stimulate the post-disaster recovery of local economies; and
- To provide the public with alternative access to certain commodities as recommended by the council.

The bill provides that participation in this program is optional. Counties choosing to participate must be responsible for administering this program within that county. The council will recommend guidelines and standards for participation. This program must allow businesses to participate even though the county in which the business is located may choose not to participate. This program is not intended to interfere with normal and ongoing commerce occurring at the local government level.

Businesses participating in this program must be certified through the county emergency management agencies, using certification standards developed by the council. If an annual program membership fee is assessed, the method of collection of said fee must be determined by the council. Program membership fees must be used, by the participating counties and state agencies, to recover administrative costs of the program or as recommended by the council.

The council must submit a report on the development and implementation of this program to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The bill provides criteria to be included in the report by February 1, 2007. The bill also provides an appropriation of $76,150 to the Department of Community Affairs for costs related to the council.

Motor Fuel Dispensing Facilities

Motor fuel terminal facilities supplying motor fuel to retail outlets around the state are currently not required to have an auxiliary source of electrical power. A lack of emergency electrical power in retail outlets creates a serious deficiency in the available mobile fuel supplies prior, during, and after a

disaster has occurred. Fuel remaining in the storage tanks of retail outlets is inaccessible until primary electrical power is restored. The lack of available mobile fuel directly affects the evacuation, response, and recovery efforts in a disaster area.

The bill creates s. 526.143, F.S., requiring each motor fuel terminal dispensing facility to operate its distribution loading racks using an alternate power source for a minimum of 72 hours following a disaster. The emergency auxiliary equipment must be operational 36 hours after the disaster. All newly constructed or substantially renovated[1] motor fuel retail outlets, with a certificate of occupancy on or after July 1, 2006, must also have an appropriate transfer switch capable of operating all fuel pumps using an alternate power source. The bill requires local and state inspections of auxiliary equipment and proof of those inspections to be available before a facility may be deemed to be in compliance and able to participate in the fuel supplier program.

By December 31, 2006, all motor fuel retail outlets that are within one-half mile of an interstate highway or a state or federally designated evacuation route must be pre-wired with an appropriate transfer switch capable of operating all required equipment using an alternate power source within the following specifications based on population:

- 16 or more fueling positions located in counties with a population of 300,000 or more;
- 12 or more fueling positions located in counties with a population of 100,000 to 299,999 ; or
- 8 or more fueling positions located in counties with a population of 99,999 or fewer residents.

The bill requires installation and wiring to be completed by a certified electrical contractor, with owners of motor fuel retail outlets keeping documentation of such installation on site or at its corporate headquarters. Additionally, each retail outlet must maintain written records confirming periodic testing and ensured operational capacity of the equipment. These records must be made available, upon request, to the Division of Emergency Management and the county emergency management agency.

The requirement for motor fuel retail outlets to be pre-wired does not apply to:

- Automobile dealers;
- Persons who operate a fleet of motor vehicles; or
- Persons who sell motor fuel exclusively to a fleet of motor vehicles.

The bill provides a severability clause stating that if any provision of s. 526.143, F.S., or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of s. 526.143, F.S.

Florida Disaster Motor Fuel Supplier Program

This bill creates the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs to allow motor fuel retail outlets, doing business in the state, to participate in a network of emergency responders authorized to provide fuel supplies and services before, during, and after a declared disaster. The program is optional and counties choosing to participate, the local county emergency management agency will be primarily responsible for administering the program within that county. In counties choosing not to participate, the Division of Emergency Management (division) must have the authority to certify businesses as members of the State Emergency Response Team (SERT). The division must recommend guidelines and standards for participation.

Participation in the program requires certification, which will be established by the division or the county emergency management director no later than July 1, 2007. Businesses that are certified will be issued a SERT logo for public display to alert responders and the public that the business is capable of assisting in an emergency. Businesses certified as a SERT member must be able to provide fuel dispensing services to other SERT members within 36 hours after a disaster has occurred, or demonstrate the ability to have such service available, and agree to make such service available as

[1] Substantially renovated is defined as "...a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet."

needed. The bill provides for SERT members to sell motor fuel through a pre-existing contract with local, state, and federal response agencies or to provide point-of-sale service to such agencies. Additionally, SERT members may sell motor fuel to the general public, or may be directed to do so by the county or state emergency management officials. The bill provides for law enforcement security to be provided, if requested, to maintain civil order during operating hours.

SERT members must be given priority when purchasing fuel. Businesses who are SERT members may be directed to remain open for specified periods during a declared curfew to provide service for emergency management personnel. Under such direction, neither the SERT member nor the emergency management personnel will be in violation of such curfew. SERT members traveling during periods of declared curfews will be required to produce valid documentation of SERT membership.

Retail motor fuel outlets, designated as SERT members, may request priority consideration relating to re-supply of motor fuel to continue to provide fuel and necessary services to emergency responders. Emergency management agencies must take such requests into account when determining appropriate disaster response protocol.

The bill also preempts regulation of and requirements for the siting and placement of an alternate power source at motor fuel terminal facilities, wholesalers, and retail sales outlets to the state.

The Department of Environmental Protections' Energy Office must review and provide a report to the Legislature, including the status of the motor fuel supply program and a list of participating retail fuel outlets by March 1, 2007.

Access to Residential Multi-Family Dwellings for Emergency Purposes

According to the 2001 and 2004 Florida Building Code,[2] multi-family residential high-rise buildings[3] must have an emergency system that provides for emergency elevator operation and lighting. The 2004 building code intends for the emergency use of the elevator to be for evacuation, medical, and rescue assistance only. Certified inspectors that conduct annual elevator inspections must confirm that all installed generators are in working order and that a generator key is present in the lockbox at or near the installed generator. If the building does not have an installed generator, the inspector must confirm that the appropriate pre-wiring and switching capabilities are operational and a contract exists for an alternate power source.

This bill requires all multifamily dwellings, as defined in the 2004 Florida Building Code, as well as all newly constructed multifamily dwellings that are at least 75 feet high and contain a public elevator, to have at least one public elevator that is capable of operating on an alternate power source, and for a specified number of hours each day over a 5-day period following a disaster that disrupts the normal supply of electricity. The alternate power source, which controls elevator operation, must also be capable of powering any connected fire alarm system in the building, as well as all required emergency lighting to portions of the building used by the public.

Each multi-family dwelling must have an available generator and fuel source on the property or have proof of a current guaranteed service contract for such equipment and fuel source for elevator operation on an on-call basis within 24 hours after a request. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management director by December 31, 2007. In regards to newly constructed multifamily dwellings, installation and operational capability requirements must be verified by local building inspectors and reported to the emergency management agency prior to occupancy.

The bill requires each person, firm, or corporation required to maintain an alternate power source under s. 553.509(4), F.S., to also maintain a written emergency operations plan detailing the sequence of

[2] ss. 1016.2 and 1006.2, F.S., respectively.

[3] Defined as buildings having occupied floors located more than 75 feet above the lowest level of fire department vehicle access.

operations before, during, and after a disaster or emergency situation. The bill provides criteria to be included in the operations plan, such as:

- A life safety plan for evacuation;
- Maintenance of the electrical and lighting supply; and
- Provisions for the health, safety, and welfare of the residents.

Additionally, the owners or operators of the multifamily dwelling must keep, on file, written records of inspections of all equipment, confirming that the equipment is properly maintained and in good working order, as well as any contracts for alternate power generation equipment. The written operations plan and inspection records are to be provided to local and state government agencies, when requested, for review. The bill requires the owner or operator of a multifamily dwelling to keep a generator key in a lockbox posted at or near any installed generator unit.

The bill also requires owners of multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development, to make every effort to obtain grant funding at the federal or state level to comply with the requirements of s. 553.509(4), F.S. If this is not possible, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a disaster or an emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

The bill revises the requirements for annual elevator inspections to confirm that:

- Installed generators are in working order;
- Inspection records are current;
- The lockbox with key are in the appropriate location;
- If the building does not have an installed generator, the appropriate pre-wiring and switching capabilities are operational; and
- A valid contract for alternate power is in effect.

Public Awareness Campaign

Florida law creates the Division of Emergency Management (division) within the Department of Community Affairs. One of the duties of the division is to institute a statewide public awareness campaign on emergency preparedness issues.[4]

The bill expands the information in the campaign to include:

- The personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster; and
- Relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters.

The bill provides for all educational materials to be available in alternative formats and mediums to ensure they are available to persons with disabilities.

The bill requires the division and the Department of Education to coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria. The bill appropriates $3.4 million for the public awareness campaign.

Minimum Criteria for County Emergency Operations Centers

[4] s. 252.35(2)(i), F.S.

The bill provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space, as determined by assessments performed by the Department of Community Affairs based on guidance from the Federal Emergency Management Agency (FEMA). Criteria for a county emergency operations center include, but are not limited to, county population, hurricane evacuation clearance time for the vulnerable population of the county, structural survivability of the existing emergency operations center, and FEMA guidance for workspace requirements for the emergency operations center.

First priority for funding will be given to county emergency operations centers where no survivable facility exists and where workspace deficits exist. Funding provided for these purposes may not be used for land acquisition or recurring expenditures. Funding is also limited to the construction or structural renovation of a county emergency operations center in order to meet national workspace recommendations and may not be used to purchase equipment, furnishings, communications, or operational systems. The bill provides a $28.6 million appropriation and requires the Department of Community Affairs to establish a competitive award process to distribute those funds for improvements to emergency operation centers.

Logistical Staging and Warehouse Capacity

The bill provides Legislative findings that improved logistical staging and warehouse capacity for commodities will help ensure that adequate supplies, equipment, and commodities are available and accessible to respond to disasters. The bill appropriates $6.5 million to the Department of Community Affairs to increase storage capacity; improve technologies to manage commodities; and enhance the ability to maintain an inventory of supplies, equipment and commodities that would be needed immediately after a disaster.

Evacuation Plans

The bill provides Legislative findings that there is a compelling need to have current evacuation decision making tools and plans based on the latest technology available for hurricane evacuation recommendations. The bill appropriates $29 million to provide new technology and tools to improve the understanding of storm surges and update regional evacuation plans. Specifically, the funding will be invested in Light Detection and Ranging technology which uses pulses of laser light to collect information on the terrain, and the National Hurricane Center's Sea, Lake and Overland Surges for Hurricanes model which estimates storm surge heights and winds.

C. SECTION DIRECTORY:

Section 1. Creates s. 252.63, F.S., establishes the Florida Disaster Supplier Program Council and the Florida Disaster Supplier Program, provides for the council's composition, governance, and duties.

Section 2. Creates s. 526.143, F.S., establishes criteria for alternate generated power capacity for motor fuel dispensing facilities.

Section 3. Creates s. 526.144, F.S., establishes the Florida Disaster Motor Fuel Supplier Program.

Section 4. Amends s. 553.509(4), F.S., establishes criteria for alternate generated power source for residential multifamily dwellings providing emergency vertical accessibility.

Section 5. Amends s. 252.35, F.S. provides additional information to be included in the Division of Emergency Management's public awareness programs.

Section 6. Provides that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space; provides an appropriation and requires the Department of Community Affairs to establish a competitive award process to distribute those funds for improvements to emergency operation centers

Section 7. Provides an appropriation to the Department of Community Affairs to increase storage capacity; improve technologies to manage commodities; and enhance the ability to maintain an inventory of supplies, equipment and commodities that would be needed immediately after a disaster.

Section 8. Provides an appropriation to the Department of Community Affairs to provide new technology and tools to improve the understanding of storm surges and update regional evacuation plans.

Section 9. Provides an appropriation to the Department of Community Affairs for costs related to the Florida Disaster Supplier Program Council.

Section 10. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides a nonrecurring appropriation of $20 million from the General Revenue Fund and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to provide for the construction or structural renovation of county emergency operations centers.

The bill provides a nonrecurring appropriation of $400,000 from the General Revenue Fund, a recurring appropriation of $1.6 million and a nonrecurring appropriation of $4.5 million from the Emergency Management, Preparedness and Assistance Trust Fund to the Department of Community Affairs to increase storage capacity; improve technologies to manage commodities; and enhance the ability to maintain an inventory of supplies, equipment and commodities that would be needed immediately after a disaster.

The bill appropriates $29 million from the U.S. Contributions Trust Fund to the Department of Community Affairs to provide new technology and tools to improve the understanding of storm surges and update regional evacuation plans.

The bill also provides a nonrecurring appropriation of $76,150 from the General Revenue Fund to the Department of Community Affairs to fund the Florida Disaster Supplier Program Council and $3.4 million from the U.S. Contributions Trust Fund to fund the Division of Emergency Management's public awareness campaign.

The Department of Agriculture and Consumer Services states that inspections required by this bill can be handled within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill may have an indeterminate positive fiscal impact on local government revenues from the collection of annual membership fees from local businesses that voluntarily seek to obtain certification as a state disaster supplier.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector will include the purchase and installation of a transfer switch for each building unit or the purchase and installation of a generator. The transfer switch must be able to accept an alternate power source. The cost of the transfer switch is approximately $6,000 to $10,000 depending on the specifications of the building. The purchase of a generator costs approximately $300 to $500 per kilowatt.[5] Cost estimates will vary depending on the size and needs of each building. Businesses can choose to contract with a service provider if they do not want to incur the cost of purchasing a generator. The service contract costs will vary depending on the need, size, and specification of the building.

The Florida Disaster Supplier Program Council (council) will be surveying local districts and local stakeholders to estimate the anticipated expenditures and costs of the Florida Disaster Supplier Program on the local level. Those costs will be included in the council's report, due February 1, 2007, to the Governor, the Speaker of the Florida House of Representatives, and the President of the Florida Senate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[5] www.northerntool.com

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Finance and Tax Committee adopted two amendments to the bill. One amendment added a section to the bill that provided minimum operating criteria for county emergency operations centers. Also, the amendment specified that funding under this section is limited to the construction or structural renovation of county emergency operations centers. In addition, the amendment appropriated $20 million from nonrecurring General Revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to provide for the construction or structural renovation of county emergency operations centers.

The amendment also appropriated $826,150 from recurring General Revenue to the Department of Community Affairs, which included $76,150 to fund the Florida Disaster Supplier Program Council and $750,000 to fund the Division of Emergency Management's public awareness campaign.

The other amendment removed the motor fuel tax credit for retail motor fuel outlets that install generators or other equipment for an alternative power source.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendments adopted by the Finance and Tax Committee.

At the April 17, 2006 meeting, the Fiscal Council approved HB 7121 with one amendment. The amendment removed the bills appropriations and provided:

- A $28.6 million appropriation and requires the Department of Community Affairs to establish a competitive award process to distribute those funds for improvements to emergency operation centers.
- A $6.5 million appropriation to the Department of Community Affairs to increase storage capacity; improve technologies to manage commodities; and enhance the ability to maintain an inventory of supplies, equipment and commodities that would be needed immediately after a disaster.
- A $29 million appropriation to the Department of Community Affairs to provide new technology and tools to improve the understanding of storm surges and update regional evacuation plans.
- A $76,150 appropriation to the Department of Community Affairs to fund the Florida Disaster Supplier Program Council and $3.4 million from the U.S. Contributions Trust Fund to fund the Division of Emergency Management's public awareness campaign.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to disaster preparedness response and recovery; creating s. 252.63, F.S.; creating the Florida Disaster Supplier Program Council under the Department of Community Affairs; requiring the council to make recommendations for a voluntary local program to be established as the Florida Disaster Supplier Program; providing membership and organization of the council; providing duties and responsibilities of the council; authorizing the council to recommend the assessment of an annual program membership fee; providing for certification of program participants; providing requirements with respect to collection and use of program membership fees; requiring the council to submit a report; providing for termination of the council; providing intended purposes of the program; providing that participation in the program shall be at the option of each county; providing for administration of the program by participating counties;

creating s. 526.143, F.S.; providing that each motor fuel terminal facility and wholesaler that sells motor fuel in the state must be capable of operating its distribution loading racks using an alternate power source for a specified period by a certain date; providing requirements with respect to the operation of such equipment following a major disaster; providing requirements with respect to inspection of such equipment; requiring newly constructed or substantially renovated motor fuel retail outlets to be capable of operation using an alternate power source; defining "substantially renovated"; providing inspection requirements; requiring certain motor fuel retail outlets located within a specified distance from an interstate highway or state or federally designated evacuation route to be capable of operation using an alternate power source by a specified date; providing inspection and recordkeeping requirements; providing applicability; providing severability; creating s. 526.144, F.S.; creating the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs; providing purpose of the program; providing requirements for participation in the program; providing that participation in the program shall be at the option of each county; providing for administration of the program; providing requirements of businesses certified as State Emergency Response Team members; providing for preemption to the state of the regulation of and requirements for siting and placement of an alternate power source and any related

equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets; providing for review of the program; providing a report; amending s. 553.509, F.S., relating to requirements with respect to vertical accessibility under pt. II of ch. 553, F.S., the "Florida Americans With Disabilities Accessibility Implementation Act"; requiring specified existing and newly constructed residential multifamily dwellings to have at least one public elevator that is capable of operating on an alternate power source for emergency purposes; providing requirements with respect to the alternate power source; providing for verification of compliance by specified dates; providing requirements with respect to emergency operations plans and inspection records; requiring any person, firm, or corporation that owns or operates specified multistory affordable residential dwellings to attempt to obtain grant funding to comply with the act; requiring an owner or operator of such a dwelling to develop an evacuation plan in the absence of compliance with the act; providing additional inspection requirements under ch. 399, F.S., the "Elevator Safety Act"; amending s. 252.35, F.S.; expanding the duty of the Division of Emergency Management to conduct a public educational campaign on emergency preparedness issues; providing an additional duty of the division with respect to educational outreach concerning disaster preparedness; providing legislative findings with respect to minimum criteria for county emergency operations centers;

specifying criteria for county emergency operations centers; providing priority and restrictions for funding; providing an appropriation to the Department of Community Affairs to establish a competitive award process; providing legislative findings with respect to improved logistical staging and warehouse capacity for commodities; providing uses of appropriated funds; providing an appropriation to the Department of Community Affairs for logistical improvements and technology; providing legislative findings with respect to hurricane evacuation recommendations; providing for use of appropriated funds; providing an appropriation to the Department of Community Affairs to update regional hurricane evacuation plans; providing an appropriation to the Department of Community Affairs for the Florida Disaster Supplier Program Council; providing an appropriation to the Department of Community Affairs for the Division of Emergency Management's public awareness campaign; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 252.63, Florida Statutes, is created to read:

252.63 Florida Disaster Supplier Program Council; Florida Disaster Supplier Program.--

(1) FLORIDA DISASTER SUPPLIER PROGRAM COUNCIL.--

(a) The Florida Disaster Supplier Program Council is created under the Department of Community Affairs. The council

shall make recommendations for a voluntary local program to be established as the Florida Disaster Supplier Program. The council shall make recommendations for the effective and efficient administration of the Florida Disaster Supplier Program.

(b)1. The council shall consist of seven members, comprised of the county emergency management directors from each of the seven emergency response regions of the Division of Emergency Management as designated by the Florida Emergency Preparedness Association.

2. The members of the council shall elect a chair and a vice chair from among their membership. The chair shall preside at all meetings of the council.

3. The council shall meet at the call of the chair or at the request of a majority of its membership.

4. Members shall serve for the duration of the existence of the council. A vacancy on the council shall be filled by the chair according to the original membership stipulations until the council is terminated.

5. Members of the council shall serve without compensation, but shall be entitled to per diem and travel expenses as provided in s. 112.061 while engaged in the performance of their official duties.

(c) Duties and responsibilities of the council shall include, but not be limited to, recommending to the division:

1. State disaster preparedness criteria necessary for implementation of the Florida Disaster Supplier Program.

2. The most effective means of providing access to businesses participating in the program in order to facilitate the operation, supply, and staffing of such businesses, as feasible, under emergency conditions.

3. A statewide system of certification for disaster suppliers in the following categories:

a. Pharmaceutical.

b. Food and water.

c. Building supplies.

d. Ice.

e. Other categories as deemed necessary by the council.

4. If deemed necessary by the council, the assessment of an annual program membership fee for businesses voluntarily seeking to obtain certification as a state disaster supplier under the established program guidelines. The determination of the necessity of assessing an annual program membership fee shall include county surveys and input from business, industry, and state agencies. Any recommendation with respect to the assessment of program fees shall be contained in the report required under subsection (5).

5. A State Emergency Response Team logo that bears the name of the State of Florida and the type of supplies being provided by the supplier for display by businesses participating in the program.

(2) FLORIDA DISASTER SUPPLIER PROGRAM.--

(a) The Florida Disaster Supplier Program Council shall make recommendations for a voluntary local program to be

established as the Florida Disaster Supplier Program. The intended purposes of the program are:

1. To provide statewide oversight of the availability and provision of necessary supplies prior to, during, and following a state of emergency or natural or manmade disaster or catastrophe.

2. To assist in the rapid recovery of an area affected by a natural or manmade disaster or catastrophe and to immediately stimulate the postdisaster recovery of local economies.

3. To provide the public with alternative access to certain commodities as recommended by the Florida Disaster Supplier Program Council.

(b) Participation in the Florida Disaster Supplier Program shall be at the option of each county governing body. Each county choosing to participate in the program shall be responsible for administering the program within that county. Guidelines and administration standards for participating counties shall be recommended by the Florida Disaster Supplier Program Council.

(c) The Florida Disaster Supplier Program shall allow businesses in counties that choose not to participate in the program to voluntarily participate in the program and provide for the sale of emergency-use supplies and services before, during, and following an emergency or natural or manmade disaster or catastrophe under the conditions set forth in this section.

(d) The Florida Disaster Supplier Program shall be designed to in no way interfere with normal and ongoing commerce occurring in any political subdivision of the state.

(3) PROGRAM CERTIFICATION.--Upon the recommendation of the council, certification of a business requesting to participate in the program shall be conducted through county emergency management agencies or designees as prescribed by the county's elected governing body. Participating counties shall use certification standards developed by the council.

(4) COLLECTION AND USE OF PROGRAM MEMBERSHIP FEES.--If an annual program membership fee is assessed as provided in subparagraph (1)(c)4., the methods for collecting such fee shall be determined by the council. Program membership fees collected shall be used in whole or in part to recover the administrative costs of the program and as may be recommended by the council. Program membership fees shall be used by the participating counties and state agencies as may be determined by the recommendations of the council and as provided by law.

(5) REPORT.--The council shall submit a report on the development and implementation of the Florida Disaster Supplier Program to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than February 1, 2007. The report shall include recommendations for any needed legislation and program fees and an analysis of the program's effect on the provision of supplies within the state during a state of emergency or natural or manmade disaster or catastrophe.

(6) TERMINATION.--The council shall terminate on July 1, 2008.

Section 2. Section 526.143, Florida Statutes, is created to read:

526.143 Alternate means of power generation for motor fuel dispensing facilities.--

(1) No later than December 31, 2006, each motor fuel terminal facility, as defined in s. 526.303(16), and wholesaler, as defined in s. 526.303(17), that sells motor fuel in this state must be capable of operating its distribution loading racks using an alternate power source for a minimum of 72 hours. Pending a postdisaster examination of the equipment by the operator to determine any extenuating damage that would render it inoperable or unsafe to use, the facility must have such alternate power source available for operation no later than 36 hours after a major disaster, as defined in s. 252.34. Initial inspection for proper installation and operation shall be completed by a local building inspector, and verification of the inspection must be submitted to the local county emergency management agency. Inspectors from the Department of Agriculture and Consumer Services shall perform a periodic visual inspection of the alternate power source to ensure that the emergency auxiliary electrical equipment is installed. Each facility shall perform annual inspections to ensure that the emergency auxiliary electrical generators are in good working order and show proof of those inspections in order to be deemed in compliance with and to participate in the fuel supplier program.

(2) Each newly constructed or substantially renovated motor fuel retail outlet, as defined in s. 526.303(14), for which a certificate of occupancy is issued on or after July 1, 2006, must be prewired with an appropriate transfer switch and be capable of operating all fuel pumps, dispensing equipment, life-safety systems, and payment acceptance equipment using an alternate power source. As used in this subsection, the term "substantially renovated" means a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet. Local building inspectors shall include an equipment and operations check for compliance with this subsection in the normal inspection process before issuing a certificate of occupancy. A copy of the certificate of occupancy shall be provided to the county emergency management agency upon issuance of such certificate. Each facility shall perform periodic inspections to ensure that the installed transfer switch and emergency auxiliary electrical generators are in good working order and provide proof of those inspections to the county emergency management agency in order to be in compliance with and to participate in the Florida Disaster Motor Fuel Supplier Program under s. 526.144.

(3)(a) No later than December 31, 2006, each motor fuel retail outlet described in subparagraph 1., subparagraph 2., or subparagraph 3. that is located within 1/2 mile of an interstate highway or state or federally designated evacuation route must be prewired with an appropriate transfer switch and be capable of operating all fuel pumps, dispensing equipment, life-safety

systems, and payment-acceptance equipment using an alternate power source:

1. A motor fuel retail outlet located in a county having a population of 300,000 or more which has 16 or more fueling positions.

2. A motor fuel retail outlet located in a county having a population of 100,000 or more, but fewer than 300,000, which has 12 or more fueling positions.

3. A motor fuel retail outlet located in a county having a population of fewer than 100,000 which has eight or more fueling positions.

(b) Installation of the wiring and transfer switch shall be performed by a certified electrical contractor. Each retail outlet subject to this subsection must keep a copy of the documentation of such installation on site or at its corporate headquarters. In addition, each retail outlet must keep a written record that confirms the periodic testing and ensured operational capacity of the equipment. The required documents must be made available upon request to the Division of Emergency Management and the county emergency management agency.

(4)(a) Subsections (2) and (3) apply to any self-service, full-service, or combination self-service and full-service motor fuel outlet regardless of whether the business is located on the grounds of, or is owned by, another retail business establishment that does not engage in the business of selling motor fuel.

(b) Subsections (2) and (3) do not apply to:

1. An automobile dealer;

2. A person who operates a fleet of motor vehicles; or

3. A person who sells motor fuel exclusively to a fleet of motor vehicles.

(5) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared severable.

Section 3. Section 526.144, Florida Statutes, is created to read:

526.144 Florida Disaster Motor Fuel Supplier Program.--

(1)(a) There is created the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs. The Florida Disaster Motor Fuel Supplier Program shall allow any retail motor fuel outlet doing business in the state to participate in a network of emergency responders to provide fuel supplies and services to government agencies, medical institutions and facilities, critical infrastructure, and other responders, as well as the general public, before, during, and after a declared disaster as described in s. 252.36(2).

(b) Participation in the Florida Disaster Motor Fuel Supplier Program shall be at the option of each county governing body. In counties choosing to participate in the program, the local county emergency management agency shall be primarily responsible for administering the program within that county. In counties that do not choose to participate in the program, the Division of Emergency Management shall have the authority to

certify businesses as members of the State Emergency Response Team and issue appropriate signage. Guidelines and administration standards for participating counties shall be recommended by the Division of Emergency Management and the county emergency management agency.

(c) Participation in the program shall require certification by the Division of Emergency Management or the county emergency management agency of a retail motor fuel outlet's preparedness to provide emergency services. Requirements for certification shall be established by the Division of Emergency Management or the county emergency management agency no later than July 1, 2007. Businesses that are certified shall be issued a State Emergency Response Team logo for public display to alert emergency responders and the public that the business is capable of assisting in an emergency.

(2) At a minimum, businesses that are certified as State Emergency Response Team members must have the onsite capability to provide fuel dispensing services to other State Emergency Response Team members within 36 hours after a major disaster has occurred, or demonstrate the ability to have such service available, and agree to make such service available as needed. Businesses may choose to sell motor fuel through a preexisting contract with local, state, and federal response agencies or may provide point-of-sale service to such agencies. In addition, businesses may choose to sell motor fuel to the general public or may be directed by county or state emergency management officials to provide such service pursuant to ss. 252.35 and

252.38. If requested, appropriate law enforcement security may be provided to the participating business for the purpose of maintaining civil order during operating hours.

(3) Persons who are designated as State Emergency Response Team members and who can produce appropriate identification, as determined by state or county emergency management officials, shall be given priority for the purchase of motor fuel at businesses designated as State Emergency Response Team members. Businesses may be directed by county or state emergency management officials to remain open for specified periods during a declared curfew to provide service for emergency management personnel. Under such direction, a business shall not be in violation of the curfew and shall not be penalized for such operation, nor shall emergency management personnel be in violation of such curfew. Persons traveling during periods of a declared curfew shall be required to produce valid official documentation of their position as a State Emergency Response Team member or local emergency response agency staff member or official. Such documentation may include, but is not limited to, a current State Emergency Response Team identification badge, current law enforcement agency identification or shield or the identification or shield of another emergency response agency, current health care employee identification card, or current government services identification card indicating a critical services position, as applicable.

(4) A retail motor fuel outlet that is designated as State Emergency Response Team member may request priority consideration with respect to the resupply of motor fuel in

order to continue to provide fuel and necessary services to emergency responders. Such request is not binding but shall be considered by emergency management agencies in determining appropriate disaster response protocol.

(5) Notwithstanding any other law or local ordinance, to ensure an appropriate emergency management response to major disasters in the state, the regulation of and requirements for the siting and placement of an alternate power source and any related equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets shall be exclusively controlled by the state.

(6) The Florida Energy Office of the Department of Environmental Protection shall review progress in postdisaster motor fuel supply distribution and provide a report to the Speaker of the House of Representatives and the President of the Senate by March 1, 2007. The report shall include information on statewide compliance with s. 526.143 and identification of all retail motor fuel outlets that are participating in the Florida Disaster Motor Fuel Supplier Program.

Section 4. Section 553.509, Florida Statutes, is amended to read:

553.509 Vertical accessibility.--Nothing in sections 553.501-553.513 or the guidelines shall be construed to relieve the owner of any building, structure, or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the guidelines require an elevator to be installed in such building, structure, or facility, except for

the areas, rooms, and spaces described in subsections (1), (2), and (3):

(1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.~~,~~

(2) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.~~; and~~

(3) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.

(4)(a) Any person, firm, or corporation that owns or operates a residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, shall have at least one public elevator that is capable of operating on an alternate power source for emergency purposes. Alternate power shall be available for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must also be capable of powering any connected fire alarm system in the building.

(b) At a minimum, the elevator must be appropriately prewired and prepared to accept an alternate power source and must have a connection on the line side of the main disconnect,

pursuant to National Electric Code Handbook, Article 700. In addition to the required power source for the elevator and connected fire alarm system in the building, the alternate power supply must be sufficient to provide emergency lighting to the lobbies, hallways, and other portions of the building used by the public. Residential multifamily dwellings must have an available generator and fuel source on the property or have proof of a current guaranteed service contract for such equipment and fuel source to operate the elevator on an on-call basis within 24 hours after a request. By December 31, 2006, local building inspectors must provide to the county emergency management agency verification of engineering plans for residential multifamily dwellings that provide for the capability to generate power by alternate means. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management agency by December 31, 2007.

(c) Each newly constructed residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, must have at least one public elevator that is capable of operating on an alternate power source for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power

source that controls elevator operations must be capable of powering any connected fire alarm system in the building. In addition to the required power source for the elevator and connected fire alarm system, the alternate power supply must be sufficient to provide emergency lighting to the lobbies, hallways, and other portions of the building used by the public. Engineering plans and verification of operational capability must be provided by the local building inspector to the county emergency management agency before occupancy of the newly constructed building.

(d) Each person, firm, or corporation that is required to maintain an alternate power source under this subsection shall maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a life safety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents. In addition, the owner or operator of the residential multifamily dwelling must keep written records of quarterly inspections of life safety equipment and alternate power generation equipment, which confirm that such equipment is properly maintained and in good working condition, and any contracts for alternate power generation equipment. The written emergency operations plan and inspection records shall be open for periodic inspection by local and state government agencies as deemed necessary. The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.

(e) Multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with this subsection. If an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

(f) As a part of the annual elevator inspection required under s. 399.061, certified inspectors shall confirm that all installed generators required by this chapter are in working order, that the inspection records are current, and that the required generator key is present in the lockbox posted at or near the installed generator. If a building does not have an installed generator, the inspector shall confirm that the appropriate prewiring and switching capabilities are operational and that a contract for contingent services for alternate power is current for the operating period.

However, buildings, structures, and facilities must, as a minimum, comply with the requirements in the Americans with Disabilities Act Accessibility Guidelines.

Section 5. Paragraph (i) of subsection (2) of section 252.35, Florida Statutes, is amended, paragraphs (j) through (v) are renumbered as paragraphs (k) through (w), respectively, and a new paragraph (j) is added to that subsection, to read:

252.35 Emergency management powers; Division of Emergency Management.--

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties under ss. 252.31-252.90, the division shall:

(i) Institute statewide public awareness programs. This shall include an intensive public educational campaign on emergency preparedness issues, including, but not limited to, the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public educational campaign shall include relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters. All educational materials must be available in alternative formats and mediums to ensure that they are available to persons with disabilities.

(j) The Division of Emergency Management and the Department of Education shall coordinate with the Agency For Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in

need of assistance but are not defined under special-needs criteria.

Section 6. The Legislature finds that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space, as determined by assessments performed by the Department of Community Affairs based on guidance from the Federal Emergency Management Agency. Criteria for a county emergency operations center include, but are not limited to, county population, hurricane evacuation clearance time for the vulnerable population of the county, structural survivability of the existing emergency operations center, and Federal Emergency Management Agency guidance for workspace requirements for the emergency operations center. First priority for funding shall be for county emergency operations centers where no survivable facility exists and where workspace deficits exist. Funding may not be used for land acquisition or recurring expenditures. Funding is limited to the construction or structural renovation of the county emergency operations center in order to meet national workspace recommendations and may not be used to purchase equipment, furnishings, communications, or operational systems. There is hereby appropriated $20 million from nonrecurring general revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to establish a competitive award process to implement this section. No more than 5 percent of the funds provided under this section may be used by the department for administration.

Section 7. The Legislature finds that improved logistical staging and warehouse capacity for commodities will help ensure that adequate supplies, equipment, and commodities are available and accessible to respond to disasters. Appropriated funds may be used for increasing storage capacity; improving technologies to manage commodities; and enhancing the ability to maintain in a safe and secure manner an inventory of supplies, equipment, and commodities that would be needed in the immediate aftermath of a disaster. There is hereby appropriated $400,000 from nonrecurring general revenue, $1.6 million from recurring funds within the Emergency Management, Preparedness, and Assistance Trust Fund, and $4.5 million from nonrecurring funds within the Emergency Management, Preparedness, and Assistance Trust Fund to the Department of Community Affairs for logistical improvements and technology.

Section 8. The Legislature finds that there is a compelling need to have current evacuation decisionmaking tools and plans based on the latest technology available to serve as the scientific basis for hurricane evacuation recommendations. Appropriated funds may be used to update hurricane evacuation plans using Light Detecting and Ranging technology and the National Hurricane Center's computerized Sea, Lake and Overland Surges for Hurricanes model. There is hereby appropriated $29 million from the U.S. Contributions Trust Fund to the Department of Community Affairs to update regional hurricane evacuation plans using Light Detecting and Ranging technology and the National Hurricane Center's computerized Sea, Lake and Overland Surges for Hurricanes model. No more than 5 percent of the funds

provided under this section may be used by the department for administration.

Section 9. There is hereby appropriated $76,150 from nonrecurring general revenue to the Department of Community Affairs for the Florida Disaster Supplier Program Council.

Section 10. There is hereby appropriated $3.4 million from the U.S. Contributions Trust Fund to the Department of Community Affairs for the Division of Emergency Management's public awareness campaign.

Section 11. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7155 PCB GO 06-29 State Financial Matters
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N	Mitchell	Williamson
1) Fiscal Council	(W/D)		
2) State Administration Council		Mitchell	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

This committee bill was approved by the Governmental Operations Committee pursuant to House Rule 7.9.

The bill contains statutory changes sought by the State Board of Administration:

- Amends the interest rate calculation assumption on interest accrued in transfers between the Florida Retirement System Pension Plan and the Public Employee Optional Retirement Program (FRS Investment Plan).
- Provides that certain military service is credible service under the FRS Investment Plan;
- Creates procedures for repayment and review of invalid distributions from the FRS Investment Plan.
- Revises the investments that the State Board of Administration can make without limitation and the investments authorized with no more than 25 percent of any fund;
- Increases, from 20 percent to 25 percent, the amount of any fund which the State Board of Administration may invest in certain corporate obligations and securities of a foreign corporation or a foreign commercial entity; and
- Authorizes the State Board of Administration to "sell short" any authorized securities and investments.

The bill changes a cross-reference to the separate investment authority provided to the Florida School for the Deaf and Blind.

This bill may have a positive fiscal impact on the funds managed by the State Board of Administration. The bill does not appear to have a fiscal impact on any other revenues of state government or the expenditures of state government. This bill does not appear to have a fiscal impact on local governments.

The bill does not appear to create, modify, or eliminate rulemaking authority.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the authority of the State Board of Administration related to invalid distributions and authorized investments.

B. EFFECT OF PROPOSED CHANGES:

Public Employee Optional Retirement Program

In 2000, the Florida Legislature created the Public Employee Optional Retirement Program in part II of chapter 121, Florida Statutes. The State Board of Administration, which is responsible for establishing the program, calls this program the Florida Retirement System (FRS) Investment Plan in order to distinguish it from the FRS defined benefit program, the FRS Pension Plan.[1] The FRS Investment Plan is a defined contribution retirement plan in which employer contributions, based on membership class, are made to an account established for the participant. The participant can then choose, from a number of investment funds which "span the risk-return spectrum," how to invest those contributions.[2]

New employees of FRS employers are automatically enrolled in the FRS Pension Plan on the first day of their employment.[3] Within five months following their month of hire, these new employees may elect to participate in the FRS Investment Plan instead of the FRS Pension Plan.[4] Employees of FRS employers also have a one-time option to change their retirement plan from the FRS Investment Plan to the FRS Pension Plan or from the FRS Pension Plan to the FRS Investment Plan.[5]

Transfers from the FRS Pension Plan to the FRS Investment Plan

Transfers from the FRS Pension Plan to the FRS Investment Plan are governed, in part, by s. 121.4501(3)(c), F.S. If a participant elects to transfer the present value of the employee's accumulated benefit obligation earned under the Pension Plan, the Division of Retirement must transfer the funds within 30 days of the employee beginning participation in the Investment Plan. With these time constraints, the Division must use estimates of the employee's creditable service[6] and average final compensation.[7] Within 60 days of the initial transfer, the Division must "true-up" the transfer - recomputing the amount transferred based on the participant's creditable service and average final compensation as of the date of FRS Investment Plan participation.[8] If the recomputed amount indicates, by $10 or more, that excess funds were transferred from the FRS Pension Plan, the Division of Retirement is required to transfer the excess funds from the participant's FRS Investment Plan to the FRS Pension Plan, based upon six percent effective annual interest, compounded annually, pro rata based on the participant's allocation plan.[9] If the recomputed amount indicates, by $10 or more, that insufficient funds were transferred from the FRS Pension Plan, the Division of Retirement is required to

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[1] Fla. State Board of Admin., Fla. Ret. Sys. Summary Plan Description - FRS Investment Plan (Sept. 1, 2005), available at http://www.rol.frs.state.fl.us/myfrs/forms/pdf/frs_ip_spd.pdf (last visited Mar. 12, 2006).
[2] *Id.*
[3] Fla. Stat. § 121.4501(4)(a) (2005).
[4] *Id.*
[5] Fla. Stat. § 121.4501(4)(e) (2005).
[6] Fla. Stat. § 121.021(17)(a) (2005) ("Creditable service means the sum of his or her past service, prior service, military service, out-of-state or non-FRS in-state service, workers' compensation credit, leave-of-absence credit and future service allowed within the provisions of this chapter if all required contributions have been paid and all other requirements of this chapter have been met.")
[7] Fla. Stat. § 121.021(24) (2005) ("Average final compensation means the average of the 5 highest fiscal years of compensation for creditable service prior to retirement, termination, or death.")
[8] Fla. Stat. § 121.4501(3)(c)3. (2005).
[9] *Id.*

transfer the outstanding amount from the FRS Pension Plan to the participant's FRS Investment Plan account based upon eight percent annual interest, compounded annually.[10]

This bill changes the interest rate for transfers required due to insufficient funds from the FRS Pension Plan to the FRS Investment Plan. The bill sets the effective interest rate for the transfers "to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system." Effective July 1, 2005, the actuarial investment return rate was reduced to 7.75% by the Florida Retirement System Actuarial Assumption Conference.

Credit for Military Service and the FRS Investment Plan

Part I of chapter 121, Florida Statutes, sets forth the general provisions for the FRS, including credit for military service in section 121.111, Florida Statutes. This section allows military service to be creditable service[11] for FRS purposes if five criteria are met:[12]

> (1) The employee is actively employed by an FRS employer immediately prior to service and leaves his or her employment for the purpose of induction into the Armed Forces of the United States or entry into active duty in the Armed Forces of the United States;[13]
>
> (2) The employee is entitled to reemployment under the provisions of the Veterans' Reemployment Rights Act;[14]
>
> (3) The employee applies for reemployment with the same FRS employer and is reemployed by that FRS employer within the applicable timeframes;[15]
>
> (4) The employee makes any required employee contributions and the employer makes the required employer contributions for the employee's membership class for each month of service credit during such period of military service;[16] and
>
> (5) The period of service claimed pursuant to this subsection does not exceed the applicable periods.[17]

Part II of chapter 121, Florida Statutes, relating to the FRS Investment Plan, is silent regarding credit for military service. This bill adds a provision to state that credible service for FRS Investment Plan participants includes military service in the Armed Forces of the United States as provided in section 121.111, Florida Statutes.

Invalid Distributions and the FRS Investment Plan

Section 121.591, Florida Statutes, governs the payment of benefits under the FRS Investment Plan.

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[10] *Id.*
[11] Fla. Stat. § 121.021(17)(a) (2005), *supra* note 7.
[12] These criteria are provided in subsection (1). Subsection (2) applies to employees whose initial date of employment was before January 1, 1987, and it allows those employees to receive four years of creditable service for military service upon payment of certain contributions and subject to certain limitations.
[13] Fla. Stat. § 121.111(1)(a) (2005) (An employee is construed to have left his or her employment for military purposes if he or she reported for active duty within 60 days after leaving such employment).
[14] Fla. Stat. § 121.111(1)(b) (2005) (specifically citing "38 U.S.C. ss. 2021 et seq.")
[15] Fla. Stat. § 121.111(1)(c) (2005) (specifically citing "the time set forth in s. 2021 or s. 2024 of the Veterans' Reemployment Rights Act, whichever is applicable").
[16] Fla. Stat. § 121.111(1)(d) (2005) (based upon the employee's rate of monthly compensation as of the date that the employee left his or her position, plus 6.5 percent interest compounded annually).
[17] Fla. Stat. § 121.111(1)(e) (2005) (specifically citing "the provisions of ss. 2021 and 2024 of the Veterans' Reemployment Rights Act which are applicable in the member's case").

FRS Investment Plan payments also are controlled by section 121.4501, Florida Statutes, which establishes the FRS Investment Plan, and section 121.091(9), Florida Statutes, which provides limitations on employment after retirement.

In order for benefits to be paid, an employee must have terminated employment[18] with the FRS employer, or be deceased, and have filed an application to receive benefits. Benefit payments are not made until the employee has been terminated for three calendar months.[19] The State Board of Administration may permit, by rule, distribution of up to 10 percent of the participant's account after being terminated for one calendar month if a participant has reached the normal retirement requirements of the defined benefit plan.[20] Benefits are payable in one of three ways:

1. A lump-sum distribution to the participant;

2. A lump-sum direct rollover distribution where all accrued benefits, plus interest and investment earnings, are paid from the participant's FRS Investment Account directly to the custodian of an eligible retirement plan; or

3. Periodic distributions, as authorized by the State Board of Administration.[21]

This section does not currently have a provision which governs "invalid distributions."

This bill defines an invalid distribution as a distribution from an FRS Investment Account which violates the statute governing investment plan benefits,[22] the statute establishing the FRS Investment Account,[23] or the statute limiting employment after retirement.[24]

This bill provides that if an employee or former employee receives an "invalid distribution" from the Public Employee Optional Retirement Program Trust Fund, that invalid distribution must be repaid to the trust fund within 90 days after receipt of final notification by the State Board of Administration or the third-party administrator that the distribution was invalid. The bill further provides that if the employee or former employee does not repay the full invalid distribution within 90 days after receipt of final notification, the employee or former employee may be deemed to be retired from the FRS Investment Plan by the State Board of Administration and subject to section 121.122, Florida Statutes, which relates to renewed membership in the FRS. If an employee is deemed retired, the State Board of Administration, the Department of Management Services, or the employing agency are not liable for gains on payroll contributions that have not been deposited into the employee's FRS Investment Plan account pending resolution of the invalid distribution. The bill permits a member or former member who has been deemed retired or to have received an invalid distribution to appeal the agency decision.[25]

The changes are needed because of instances of investment plan members receiving distributions in error and failing to repay the amount despite repeated notifications of the error.[26] Many of these distributions involve members who received a distribution and then returned to work before the member was eligible by law.[27]

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[18] Fla. Stat. § 121.021(39) (2005).
[19] Fla. Stat. §§ 121.091(9)(c) and 121.591(1)(a)4. (2005) (created by ch. 2005-253, Laws of Fla.)
[20] Fla. Stat. § 121.591(1)(a)4. (2005).
[21] Fla. Stat. § 121.591(1)(c) (2005).
[22] Fla. Stat. § 121.591 (2005).
[23] Fla. Stat. § 121.4501 (2005).
[24] Fla. Stat. § 121.091(9) (2005).
[25] Fla. Stat. § 121.4501(9)(f)3. (2005) (requires the State Board of Administration to develop procedures to receive and resolve participant complaints against a provider or approved provider personnel, and, when appropriate, refer such complaints to the appropriate agency).
[26] Fla. State Board of Admin., Proposed 2006 Legislation (copy provided Jan. 2006) (on file with the State Board of Admin.) [hereinafter Fla. SBA Legislation 2006].
[27] Fla. SBA Legislation 2006.

Authorized Investments: Generally

The investment of the funds in the Florida Retirement System Trust Fund is governed by the provisions in sections 215.44 through 215.53, Florida Statutes. Section 215.47, Florida Statutes, specifies the permissible investments for the FRS Pension Plan as well as for other funds.

Authorized Investments: Without Limitation

There are currently 14 types of investments that the State Board of Administration is authorized to invest in without limitation.[28] Eight of these investments are bonds (or notes or other obligations) of identified governmental entities (*e.g.* the United States and the state). Of the six other investments, four relate to savings accounts and certificates of deposit, commercial paper, banker's acceptances, and negotiable certificates of deposit. Except for negotiable certificates of deposit, each of these investments must meet certain criteria:

- Investment in commercial paper must be "of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service."[29]

- Investment in "savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of this state or organized under the laws of the United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof" is limited to 15 percent of the net worth of the institution or a lesser amount if provided by a rule of the State Board of Administration.[30]

- Investments in time drafts or bills of exchange (banker's acceptances) must be accepted by a member bank of the Federal Reserve System having total deposits not less than $400 million.[31]

There currently are no criteria for negotiable certificates of deposit issued by domestic or foreign financial institutions in United States dollars.[32]

The bill eliminates the net worth requirement for savings accounts and certificates of deposit and the deposit requirement for banker's acceptances. In its place, the bill applies criteria similar to that used for used for commercial paper of requiring the investment to have a "prime quality of the highest letter and numerical rating as provided by at least one nationally recognized statistical rating organization".

Although not defined in the bill, a nationally recognized statistical rating organization ("NRSROs") is an organization that has been identified by the United States Securities and Exchange Commission.[33] There are currently five NRSROs: A.M. Best Company, Inc. ("A.M. Best"), Dominion Bond Rating Service Limited ("DBRS"); Fitch, Inc. ("Fitch"); Moody's Investors Service Inc. ("Moody's"); and the Standard & Poor's Division of the McGraw Hill Companies, Inc. ("S&P").[34]

Each of these NRSROs has its own set of credit ratings. For example, Moody's long-term issue credit ratings[35] range from Aaa[36] to C[37] and Moody's "appends numerical modifiers to each generic rating

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[28] Fla. Stat. § 215.47(1) (2005).
[29] Fla. Stat. § 215.47(1)(j) (2005).
[30] Fla. Stat. § 215.47(1)(h) (2005).
[31] Fla. Stat. § 215.47(1)(k) (2005).
[32] Fla. Stat. § 215.47(1)(l) (2005).
[33] The Securities and Exchange Commission has never defined the term NRSRO. Instead, NRSROs are identified through the no-action letter process. Securities and Exchange Commission, Release No. 33-8570, Definition of Nationally Recognized Statistical Rating Organization (Apr. 19, 2005), available at http://www.sec.gov/rules/proposed/33-8570.pdf (last visited Mar. 11, 2006).
[34] *Id.*
[35] Moody's, Long-Term Obligation Ratings, available at http://www.moodys.com/moodys/cust/AboutMoodys/AboutMoodys.aspx?topic=rdef&subtopic=moodys%20credit%20ratings&title=Long+Term+Obligation+Ratings.htm (last visited Mar. 11, 2006; free login required).
[36] *Id.* ("Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk.")

classification from Aa to Caa."[38] By contrast, S&P long-term issue credit ratings[39] range from AAA[40] to D[41] and "may be modified by the addition of a plus or minus sign to show relative standing within the major categories."[42]

The State Board of Administration supports[43] changing the criteria for savings accounts,[44] certificates of deposit,[45] banker's acceptances,[46] and negotiable certificates of deposit.

Authorized Investments: No More than 25 Percent

There are currently 11 types of investments that the State Board of Administration is authorized to invest in "with no more than 25 percent of any fund."[47] Most of these "25-percent-authorized investments" also must meet certain criteria. The bill changes some of these criteria and eliminates specific authority related to one of the authorized investments.

Municipal/Political Subdivision Bonds, Notes, or Obligations. Currently, the State Board of Administration may invest in bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of the state as long as those obligations are rated in any one of the three highest ratings by two nationally recognized rating services.[48] If only one nationally recognized rating service has rated the obligation, the rating must be in one of the two highest classifications.[49] This bill lowers the required rating to "investment grade" by at least one nationally recognized statistical rating organization. The following table illustrates the permissible investment range under current law and under the bill:

Source	Requirement	S&P	Moody's
Current Law	Three Highest Ratings	AAA, AA, A	Aaa, Aa1, Aa2
Current Law	Two Highest Ratings	AAA, AA	Aaa, Aa1
Bill	Investment Grade	AAA, AA, A, BBB	Aaa, Aa1, Aa2, Aa3, A1, A2, A3, Baa1, Baa2, Baa3

The State Board of Administration characterizes this change as a matter of consistency with the investment grade criteria for investing in fixed-income obligations[50] issued by foreign governments or

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[37] *Id.* ("Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.")
[38] *Id.*
[39] S&P, Long-term issue credit ratings, available at http://www2.standardandpoors.com/servlet/Satellite?pagename=sp%2FPage%2FSiteSearchResultsPg&l=EN&r=1&b=10&search=site&vqt=%22long-term+issue+credit+ratings%22#FixedIncome (click on "Long-term Issue Credit Ratings" in results, last visited Mar. 11, 2006).
[40] *Id.* ("An obligation rated 'AAA' has the highest rating assigned by S&P and the obligor's capacity to meet its financial commitment on the obligation is extremely strong.")
[41] *Id.* (" An obligation rated 'D' is in payment default. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired, unless Standard & Poor's believes that such payments will be made during such grace period. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized.")
[42] *Id.*
[43] The State Board of Administration approved this general legislative proposal at its meeting on December 13, 2005. Fla. State Board of Admin., Transcript, Fla. Cabinet Meeting, Dec. 13, 2005, pp. 52-53, Item 4. (Dec. 21, 2005).
[44] The State Board of Administration indicates the current credit exposure limitation is redundant under current portfolio guidelines and is rarely used in their portfolios. The State Board of Administration also indicates that "automated compliance testing is not possible...due to net worth information not being available." Fla. SBA Legislation 2006.
[45] *Id.*
[46] According to the State Board of Administration, "these types of securities have diminished in importance and are also rarely used in their portfolios." It also is another area where automated compliance testing with the deposit size requirement is difficult because this information is not available. The State Board of Administration believes these changes better reflect credit quality and are more effective and efficient. Fla. SBA Legislation 2006.
[47] Fla. Stat. § 215.47(2) (2005).
[48] Fla. Stat. § 215.47(2)(a) (2005).
[49] *Id.*
[50] Fla. Stat. § 215.47(2)(g) (2005).

political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.[51]

Certain Notes Secured by First Mortgages. The State Board of Administration is authorized to invest in notes secured by first mortgages on Florida real property that are insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.[52] The bill removes the limitation to Florida real property. According to the State Board of Administration, first mortgages pooled in Federal Housing Administration and Department of Veterans Affairs certificates are not pooled by the state.[53] As such, the State Board of Administration cannot utilize this provision unless it is expanded.

Investments Collateralized by Certain First Mortgages. The State Board of Administration is authorized to invest in investments that are collateralized by first mortgages covering single-family Florida residences which meet certain criteria: do not exceed $60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state or Federal Government.[54] The aggregate collateral furnished by the mortgage must be at least 150 percent of the aggregate investment and the mortgages must be segregated by the lending institution.[55] If one of these mortgages becomes more than three months delinquent, the lender is required to substitute a mortgage of equal or greater value.[56] Because the State Board of Administration considers these provisions "dated, limited in scope, and redundant,"[57] the bill removes this specific authority. The State Board of Administration will, however, continue to have the authority to invest in these mortgages under another provision of this section[58] which authorizes investment in other asset backed securities.[59]

Certain Group Annuity Contracts. The State Board of Administration is authorized to invest in group annuity contracts of the pension investment type with insurers licensed to do business in this state provided that the amount invested with any one insurer does not exceed three percent of its assets.[60] This bill removes the asset-percentage limitation and replaces it with the following requirement: rated investment grade by at least one nationally recognized rating service. The State Board of Administration views the "asset limitation as an attempt to impose credit limits, which are better effectuated by using rating requirements."[61] The State Board of Administration cites consistency with the other changes in the bill and the investment grade standard for investing in fixed-income obligations[62] issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities as support the investment grade level for these investments.[63]

Authorized Investments: Certain Foreign Corporations or Foreign Commercial Entities

The State Board of Administration is authorized to invest no more than 20 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity which has its principal office located in any country other than the United States of America or its possessions or territories.[64] This authority does not include United States dollar-denominated

[51] Fla. SBA Legislation 2006.
[52] Fla. Stat. § 215.47(2)(b) (2005).
[53] Fla. SBA Legislation 2006.
[54] Fla. Stat. § 215.47(2)(c) (2005).
[55] *Id.*
[56] *Id.*
[57] Fla. SBA Legislation 2006.
[58] Fla. Stat. § 215.47(2)(k) (2005).
[59] *Id.*
[60] Fla. Stat. § 215.47(2)(e) (2005).
[61] Fla. SBA Legislation 2006.
[62] Fla. Stat. § 215.47(2)(g) (2005).
[63] Fla. SBA Legislation 2006.
[64] Fla. Stat. §215.47(5) (2005).

securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.[65] The bill increases the authorized percentage from 20 percent to 25 percent.

The State Board of Administration explains the necessity for this change:

> "This will help avoid cross-over investments topping the current 20 percent limit. The majority of the world's investment opportunities lie outside the United States, with many of the leading multinational companies now being based outside the United States. International investing expands opportunities to invest in different types of industries that might not be prevalent in the United States. Asset classes that typically have not invested outside the United States are beginning to expand their strategies to include Foreign Markets. As the Real Estate and Alternative Asset Classes explore and begin to invest globally, we will easily reach our 20 percent ceiling on international investing and possibly miss opportunities for future asset growth."[66]

Authorized Investments: Selling Short

The bill authorizes the State Board of Administration to "sell short" any authorized securities and investments:

> "A short sale is generally the sale of a stock you do not own. Investors who sell short believe the price of the stock will fall. If the price drops, you can buy the stock at the lower price and make a profit. If the price of the stock rises and you buy it back later at the higher price, you will incur a loss. When you sell short, your brokerage firm loans you the stock. The stock you borrow comes from either the firm's own inventory, the margin account of another of the firm's clients, or another brokerage firm. As with buying stock on margin, your brokerage firm will charge you interest on the loan, and you are subject to the margin rules. If the stock you borrow pays a dividend, you must pay the dividend to the person or firm making the loan."[67]

The State Board of Administration explains the necessity for this change:

> "Current law allows the State Board of Administration to buy and sell futures contracts,[68] options,[69] and notional principal contracts.[70] Under current law, the smallest position a long-only portfolio can hold is zero, limiting the portfolio manager's ability to express negative views on stocks with small index weights. Conversely, the ability to profit from positive views by overweighting stocks is allowed within the parameters of the manager's investment guidelines. The inability of long-only portfolio managers to capture the added value associated with correctly identifying poorly performing stocks suggest that value added opportunities are not being fully explored. Large institutional investors are beginning to implement programs that combine a group of market-neutral equity managers to overlay equity index futures. The objective is to outperform the passive equity index. This approach allows institutional investors

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[65] *Id.*

[66] Fla. SBA Legislation 2006.

[67] United States Sec. and Exch. Comm., *Short Sales*, available at http://www.sec.gov/answers/shortsale.htm (last visited Mar. 12, 2006).

[68] "A futures contract is an agreement to buy or sell a specific quantity of a commodity or financial instrument at a specified price on a particular date in the future. Commodities include bulk goods, such as grains, metals, and foods, and financial instruments include U.S. and foreign currencies." United States Sec. and Exch. Comm., *Commodity Futures Trading Commission*, available at http://www.sec.gov/answers/cftc.htm (last visited Mar. 12, 2006).

[69] "Options are contracts giving the purchaser the right to buy or sell a security, such as stocks, at a fixed price within a specific period of time." United States Sec. and Exch. Comm., *Options Trading*, available at http://www.sec.gov/answers/options.htm (last visited Mar. 12, 2006).

[70] "A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts." Notional Principal Contracts, 26 C.F.R. § 1.446-3 (2006), available at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=8ddaf18a7b848e2e65251a98c9274c05;rgn=div8;view=text;node=26%3A6.0.1.1.1.0.4.16;idno=26;cc=ecfr (last visited Mar. 12, 2006).

to take advantage of both long and short positions in their effort to add value over the passive equity index. This approach has a number of benefits relative to other programs that utilize alternative types of investments. These benefits include complete transparency, daily valuation, higher levels of diversification and risk control, lower fees, and a simple institutional investment structure."[71]

Changing a Cross Reference

The bill also changes a cross reference in section 1002.36(4)(e)14., Florida Statutes, relating to the investment authority of the Board of Trustees for the Florida School of the Deaf and Blind.

C. SECTION DIRECTORY:

Section 1: Amends section 121.4501, Florida Statutes, to revise the interest rate calculation for transfers between retirement plans and to provide credit for military service for members of the FRS Investment Plan.

Section 2: Amends section 121.591, Florida Statutes, to create procedures pertaining to invalid distributions from the FRS Investment Plan.

Section 3: Amends section 215.47, Florida Statutes, to revise the standards for investments by the State Board of Administration.

Section 4: Amends section 1002.36, Florida Statutes, to update a cross reference.

Section 5: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to directly create, modify, amend, or eliminate any revenues of state government, but is expected to have a positive fiscal impact on the funds managed by the State Board of Administration.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate any expenditures of state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate any revenues of local governments.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate any expenditures of local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[71] Fla. SBA Legislation 2006.

This bill may have a direct impact on the private sector through the revised investment authority provided to the State Board of Administration.

D. FISCAL COMMENTS:

This bill may have a positive fiscal impact on the funds managed by the State Board of Administration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to state financial matters; amending s. 121.4501, F.S.; revising the method for calculating interest on certain moneys transferred between retirement accounts; providing for credit for military service of members of the Public Employee Optional Retirement Program; amending s. 121.591, F.S.; prescribing procedures to follow if a participant in the Public Employee Optional Retirement Program receives an invalid distribution; amending s. 215.47, F.S.; revising standards for determining eligibility of specified savings accounts, certificates of deposit, time drafts, bills of exchange, bonds, notes, and other instruments for investment by the State Board of Administration; amending s. 1002.36, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (3) of section 121.4501, Florida Statutes, is amended, and subsection (22) is added to that section, to read:

121.4501 Public Employee Optional Retirement Program.--

(3) ELIGIBILITY; RETIREMENT SERVICE CREDIT.--

(c)1. Notwithstanding paragraph (b), each eligible employee who elects to participate in the Public Employee Optional Retirement Program and establishes one or more individual participant accounts under the optional program may elect to transfer to the optional program a sum representing the

present value of the employee's accumulated benefit obligation under the defined benefit retirement program of the Florida Retirement System. Upon such transfer, all service credit previously earned under the defined benefit program of the Florida Retirement System shall be nullified for purposes of entitlement to a future benefit under the defined benefit program of the Florida Retirement System. A participant is precluded from transferring the accumulated benefit obligation balance from the defined benefit program upon the expiration of the period afforded to enroll in the optional program.

2. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the defined benefit program, subject to recomputation under subparagraph 3. For state employees enrolling under subparagraph (4)(a)1., initial estimates will be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees enrolling under subparagraph (4)(b)1., initial estimates will be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees enrolling under subparagraph (4)(c)1., initial estimates will be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates respectively specified above shall be construed as the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date. The benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of the estimate date:

(I) Age 62; or

(II) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the defined benefit program of the Florida Retirement System.

c. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain special risk normal retirement date, the benefit commencement age shall be the younger of the following, but shall not be younger than the member's age as of the estimate date:

(I) Age 55; or

(II) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply

under the defined benefit program of the Florida Retirement System.

d. The calculation shall disregard vesting requirements and early retirement reduction factors that would otherwise apply under the defined benefit retirement program.

3. For each participant who elects to transfer moneys from the defined benefit program to his or her account in the optional program, the division shall recompute the amount transferred under subparagraph 2. not later than 60 days after the actual transfer of funds based upon the participant's actual creditable service and actual final average compensation as of the initial date of participation in the optional program. If the recomputed amount differs from the amount transferred under subparagraph 2. by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the participant's account in the optional program the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon ~~8 percent~~ effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the participant's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this

subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the participant's allocation plan.

4. As directed by the participant, the board shall transfer or cause to be transferred the appropriate amounts to the designated accounts. The board shall establish transfer procedures by rule, but the actual transfer shall not be later than 30 days after the effective date of the member's participation in the optional program unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event which also causes the suspension of trading on any national securities exchange in the country where the securities were issued. In that event, such 30-day period of time may be extended by a resolution of the trustees. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash as determined by the state board. Such securities shall be valued as of the date of receipt in the participant's account.

5. If the board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(22) CREDIT FOR MILITARY SERVICE.--Creditable service of any member of the Public Employee Optional Retirement Program

shall include military service in the Armed Forces of the United States as provided in the conditions outlined in s. 121.111(1).

Section 2. Paragraph (a) of subsection (1) of section 121.591, Florida Statutes, is amended to read:

121.591 Benefits payable under the Public Employee Optional Retirement Program of the Florida Retirement System.--Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department. The state board or department, as appropriate, may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities as provided herein, the State Board of Administration and the Department of Management Services shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received. The State Board of Administration and the Department of Management Services, as appropriate, are authorized to cash out a de minimis account of a participant who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must either be a complete lump-sum liquidation of the account

balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the participant. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the State Board of Administration shall cancel the instrument and credit the amount of the instrument to the suspense account of the Public Employee Optional Retirement Program Trust Fund authorized under s. 121.4501(6). Any such amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings thereon shall be forfeited. Any such forfeited amounts are assets of the Public Employee Optional Retirement Program Trust Fund and are not subject to the provisions of chapter 717.

(1) NORMAL BENEFITS.--Under the Public Employee Optional Retirement Program:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) shall be payable under this subsection in accordance with the following terms and conditions:

1. To the extent vested, benefits shall be payable only to a participant.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. To receive benefits under this subsection, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the participant has been terminated for 3 calendar months, except that the board may authorize by rule for the distribution of up to 10 percent of the participant's account after being terminated for 1 calendar month if a participant has reached the normal retirement requirements of the defined benefit plan, as provided in s. 121.021(29).

5. If a member or former member of the Florida Retirement System receives an invalid distribution from the Public Employee Optional Retirement Program Trust Fund, such person shall repay the full invalid distribution to the trust fund within 90 days after receipt of final notification by the State Board of Administration or the third-party administrator that the distribution was invalid. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the Public Employee Optional Retirement Program by the state board, as provided pursuant to s. 121.4501(2)(j), and shall be subject to s. 121.122. If such person is deemed retired by the state board, any joint and several liability set out in s. 121.091(9)(c)2. becomes null and void, and the state board, the Department of

Management Services, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the Public Employee Optional Retirement Program, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(f)3. The term "invalid distribution," as used in this section, means any distribution from an account in the Public Employee Optional Retirement Program that is taken in violation of the provisions of this section, s. 121.091(9), or s. 121.4501.

Section 3. Subsections (1), (2), and (5) of section 215.47, Florida Statutes, are amended, and subsection (17) is added to that section, to read:

215.47 Investments; authorized securities; loan of securities.--Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(1) Without limitation in:

(a) Bonds, notes, or other obligations of the United States or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof.

(b) State bonds pledging the full faith and credit of the state and revenue bonds additionally secured by the full faith and credit of the state.

(c) Bonds of the several counties or districts in the state containing a pledge of the full faith and credit of the county or district involved.

(d) Bonds issued or administered by the State Board of Administration secured solely by a pledge of all or part of the 2-cent constitutional fuel tax accruing under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended, or of s. 9, Art. XII of the 1968 revised State Constitution.

(e) Bonds issued by the State Board of Education pursuant to ss. 18 and 19, Art. XII of the State Constitution of 1885, as amended, or to s. 9, Art. XII of the 1968 revised State Constitution, as amended.

(f) Bonds issued by the Florida Outdoor Recreational Development Council pursuant to s. 17, Art. IX of the State Constitution of 1885, as amended.

(g) Bonds issued by the Florida State Improvement Commission, Florida Development Commission, Division of Bond Finance of the Department of General Services, or Division of Bond Finance of the State Board of Administration.

(h) Savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of this state or organized under the laws of the United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof, and having a prime quality of the highest letter and numerical ratings as provided for by at least one nationally recognized statistical rating organization, ~~in an amount that does not exceed 15 percent of the net worth of~~

~~the institution, or a lesser amount as determined by rule by the State Board of Administration,~~ provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.

(i) Notes, bonds, and other obligations of agencies of the United States.

(j) Commercial paper of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.

(k) Time drafts or bills of exchange drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are accepted by a member bank of the Federal Reserve System and are of prime quality of the highest letter and numerical ratings as provided for by at least one nationally recognized statistical rating organization ~~having total deposits of not less than $400 million~~.

(l) Negotiable certificates of deposit issued by domestic or foreign financial institutions in United States dollars of prime quality of the highest letter and numerical ratings as provided for by at least one nationally recognized statistical rating organization.

(m) Short-term obligations not authorized elsewhere in this section to be purchased individually or in pooled accounts or other collective investment funds, for the purpose of providing liquidity to any fund or portfolio.

(n) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15

U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations and provided that such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.

(2) With no more than 25 percent of any fund in:

(a) Bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of this state, if the obligations are rated investment grade by at least one nationally recognized statistical rating organization ~~such obligations are rated in any one of the three highest ratings by two nationally recognized rating services. However, if only one nationally recognized rating service shall rate such obligations, then such rating service must have rated such obligations in any one of the two highest classifications heretofore mentioned~~.

(b) Notes secured by first mortgages ~~on Florida real property,~~ insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.

~~(c) Investments collateralized by first mortgages covering single-family Florida residences, provided such mortgages do not exceed $60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state or Federal Government and the aggregate of the collateral~~

~~furnished is at least 150 percent of the aggregate investment under this subsection. The mortgages used for collateral shall be segregated by the lending institution so that such segregation may be confirmed by independent audit. In the event any such mortgage used as collateral becomes more than 3 months delinquent, the lender shall immediately substitute therefor a mortgage of equal or greater value.~~

(c) ~~(d)~~ Mortgage securities which represent participation in or are collateralized by mortgage loans secured by real property. Such securities must be issued by an agency of or enterprise sponsored by the United States Government, including, but not limited to, the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(d) ~~(e)~~ Group annuity contracts of the pension investment type with insurers licensed to do business in this state which are rated investment grade by at least one nationally recognized rating service~~, except that amounts invested by the board with any one insurer shall not exceed 3 percent of its assets~~.

(e) ~~(f)~~ Certain interests in real property and related personal property, including mortgages and related instruments on commercial or industrial real property, with provisions for equity or income participation or with provisions for convertibility to equity ownership; and interests in collective investment funds. Associated expenditures for acquisition and operation of assets purchased under this provision or of investments in private equity or other private investment partnerships or limited liability companies shall be included as

a part of the cost of the investment.

1. The title to real property acquired under this paragraph shall be vested in the name of the respective fund.

2. For purposes of taxation of property owned by any fund, the provisions of s. 196.199(2)(b) do not apply.

3. Real property acquired under the provisions of this paragraph shall not be considered state lands or public lands and property as defined in chapter 253, and the provisions of that chapter do not apply to such real property.

(f) ~~(g)~~ Fixed-income obligations not otherwise authorized by this section issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities, if the obligations are rated investment grade by at least one nationally recognized rating service.

(g) ~~(h)~~ A portion of the funds available for investment pursuant to this subsection may be invested in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel.

(h) ~~(i)~~ Obligations of agencies of the government of the United States, provided such obligations have been included in and authorized by the Florida Retirement System Defined Benefit Plan Investment Policy Statement established in s. 215.475.

(i) ~~(j)~~ United States dollar-denominated obligations issued by foreign governments, or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.

(j) ~~(k)~~ Asset-backed securities not otherwise authorized by

this section.

(5) With no more than 25 ~~20~~ percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States of America or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.

(17) The State Board of Administration may sell short any of the securities and investments authorized under this section.

Section 4. Paragraph (e) of subsection (4) of section 1002.36, Florida Statutes, is amended to read:

1002.36 Florida School for the Deaf and the Blind.--

(4) BOARD OF TRUSTEES.--

(e) The board of trustees is invested with full power and authority to:

1. Appoint a president, faculty, teachers, and other employees and remove the same as in its judgment may be best and fix their compensation.

2. Procure professional services, such as medical, mental health, architectural, and engineering.

3. Procure legal services without the prior written approval of the Attorney General.

4. Determine eligibility of students and procedure for admission.

5. Provide for the students of the school necessary bedding, clothing, food, and medical attendance and such other

things as may be proper for the health and comfort of the students without cost to their parents, except that the board of trustees may set tuition and other fees for nonresidents.

6. Provide for the proper keeping of accounts and records and for budgeting of funds.

7. Enter into contracts.

8. Sue and be sued.

9. Secure public liability insurance.

10. Do and perform every other matter or thing requisite to the proper management, maintenance, support, and control of the school at the highest efficiency economically possible, the board of trustees taking into consideration the purposes of the establishment.

11. Receive gifts, donations, and bequests of money or property, real or personal, tangible or intangible, from any person, firm, corporation, or other legal entity. However, the board of trustees may not obligate the state to any expenditure or policy that is not specifically authorized by law. If the bill of sale, will, trust indenture, deed, or other legal conveyance specifies terms and conditions concerning the use of such money or property, the board of trustees shall observe such terms and conditions.

12. Deposit outside the State Treasury such moneys as are received as gifts, donations, or bequests and may disburse and expend such moneys, upon its own warrant, for the use and benefit of the Florida School for the Deaf and the Blind and its students, as the board of trustees deems to be in the best interest of the school and its students. Such money or property

shall not constitute or be considered a part of any legislative appropriation, and such money shall not be used to compensate any person for engaging in lobbying activities before the House of Representatives or Senate or any committee thereof.

13. Sell or convey by bill of sale, deed, or other legal instrument any property, real or personal, received as a gift, donation, or bequest, upon such terms and conditions as the board of trustees deems to be in the best interest of the school and its students.

14. Invest such moneys in securities enumerated under s. 215.47(1), (2)(c) ~~(2)(d)~~, (3), (4), and (9), and in The Common Fund, an Investment Management Fund exclusively for nonprofit educational institutions.

Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7185 CS PCB GO 06-34 Procurement of Contractual Services by a State Agency
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2518

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N	Brown	Williamson
1) State Administration Appropriations Committee	5 Y, 2 N, w/CS	Dobbs	Belcher
2) State Administration Council		Brown	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates a governor-appointed seven-member Council on Efficient Government within the Department of Management Services (DMS). The council reviews, establishes policy, and consults on outsourcing projects initiated by state agencies. Cabinet agencies are expressly included in these requirements.

The bill creates outsourcing levels based on project costs and creates business case requirements for each level. The bill identifies specific criteria for business cases and specific criteria for outsourcing contracts. The bill imposes penalties for noncompliance with the act.

The bill grants rulemaking authority to DMS to establish the criteria for certifying employees as contract negotiators.

The bill creates language governing lobbying by providers during and after contract solicitations and awards.

The bill abolishes the State Council on Competitive Government, created by s. 14.203, F.S.

The bill sets rules for the supervision of state employees.

The bill provides 8 full-time equivalent positions and $1 million in recurring General Revenue to DMS in support of the council. Of the amount, $250,000 is provided for the establishment of a Project Management Professionals training program.

Section 119.071, F.S., is modified to conform this section of statute with the repeal of s. 14.203, F.S., in the bill.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Since the 1950's, Florida has statutorily required competitive bidding in state procurement.[1] Through the years, the Legislature has amended the requirements numerous times with control over the procurement process passing from the State Purchasing Commission to the Department of General Services, now known as the Department of Management Services (DMS).[2]

Currently, Part I of Chapter 287, F.S., sets forth the requirements for the procurement of commodities and contractual services by state agencies. The law directs DMS, as the centralized authority, to oversee the implementation of competitive bidding requirements and to create uniform rules for procurement. The purchasing process also is partly decentralized. Except in the cases where state term contracts exist, agencies may buy commodities and contractual services themselves.[3]

As the state has increasingly shifted to external provision of services,[4] it has occasionally experienced challenges in ensuring that the desired results are achieved. Recent studies and audits suggest that the state's procurement process for large and complex outsourcing initiatives could be improved:

- In June 2003, the Governor's Chief Inspector General released an audit report entitled "A Road Map to Excellence in Contracting."[5] It found problems with procurement, particularly with performance monitoring, procurement methodologies, and contract writing. The report suggested a variety of solutions, including revising Ch. 287, F.S., establishing a negotiations training program, and facilitating interagency communication among procurement staff.
- In January 2004, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report entitled "The Legislature Could Strengthen State's Privatization[6] Accountability Requirements."[7] OPPAGA concurred with the Chief Inspector General's June 2003 findings and suggested Legislative actions including mandating the use of business cases, strengthening requirements for performance contracting, and strengthening oversight of agency privatization initiatives.
- Various reports by the Auditor General have identified problems. For example:
    - In the MyFloridaAlliance initiative of the State Technology Office (STO) involving outsourcing multiple functions, the STO had not conducted full feasibility studies, cost analyses, or risk assessments to determine if the outsourcing of these functions would provide the best value to the state. Additionally, the information provided in the solicitation documents did not provide sufficient detail about the STO operations, services, and the

[1] See generally Ch. 287, F.S.
[2] Relatively recent substantial changes include Ch. 82-196, L.O.F. (submitting contractual services to competition requirements), Ch. 92-279, L.O.F. (creating the Department of Management Services from the previous Department of General Services and Department of Administration), and Ch. 2002-207, L.O.F (introducing Invitation to Negotiate language and procedures).
[3] Section 287.056, F.S.
[4] The last-available data from the Center for Efficient Government documented at least 138 outsourcing projects undertaken between January 1999 and June 2004.
[5] Available online here: http://www.myflorida.com/eog/inspector_general/reports.html.
[6] OPPAGA uses "privatization" as a generic term encompassing such techniques and activities as contracting out, outsourcing, and public-private partnerships.
[7] Available online here: http://www.oppaga.state.fl.us/reports/pdf/0402rpt.pdf.

program requirements to allow for a responsible vendor to adequately respond to the specified key initiatives. The contracts with Accenture and BearingPoint lacked certain provisions to adequately protect state resources.[8] The STO subsequently cancelled the contracts.
    - In the DMS procurement of the MyFloridaMarketplace e-procurement system, the department's planning process did not include timely completion of a cost-benefit analysis or risk assessment.
    - In the Department of Business and Professional Regulation On-line Licensing and Call Center Services procurement, the department did not perform a feasibility study for the procurement's Application Management Services component.[9] Additionally, the contract, which is funded through a shared-savings model, failed to provide specifics about how to calculate cost savings and how the savings would be divided.[10]
- The Inspector General of DMS has identified similar problems regarding correctional privatization. In its 2005 internal audit, [11] the DMS Inspector General identified serious deficiencies including:
    - Failure to enforce contract provisions;
    - Allowing vendors to waive contract requirements without adjusting payments to vendors;
    - Making over $1 million in overpayments to vendors without any attempt to recover the overpayments; and
    - Allowing vendors to bill for inflated per-diem and maintenance costs.

Previous Initiatives to Improve Outsourcing

The Governor issued an Executive Order on March 11, 2004, creating the Center for Efficient Government (Center) within DMS. [12] The executive order stated that the Center was the "enterprise wide gateway for best business practices in order to improve the way state agencies deliver services to Florida's citizens." The order required the Center to:

- Establish a five-member oversight panel made up of agency heads;
- Create a centralized, multi-stage, gate process for the review, evaluation, and approval of agency outsourcing[13] initiatives;
- Provide documentation at the completion of each stage to the Legislature prior to initiation of the next stage;
- Review past outsourcing projects for best business practices and existing outsourcing plans to ensure agency compliance with center standards;
- Maintain a database with information about initiatives being performed by contractors that includes a description of the work being performed, applicable performance measures, and contractor and subcontractor identification; and
- Implement a program to transition impacted state employees.

The Center's policies required all agency outsourcing projects to undergo a sequential review and validation process, referred to as the "Gate Process." The oversight board, however, only reviewed and validated projects with an estimated value of more than $10 million per fiscal year and enterprise-wide projects proposed by the center. As an agency completed each stage, the oversight board was to review the agency's progress and determine whether to validate that progress so that the agency could

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[8] Auditor General Report No. 2005-08, *State Technology Office: MyFlorida Alliance Operational Audit*, July 2004.
[9] Auditor General Report No. 2002-112, *On-Line Licensing System & Call Center Services Agreement- Department of Business & Professional Regulation - Operational Audit*, December 2001.
[10] Auditor General Report No. 2004-112, *Department of Business & Professional Regulation - On-Line Licensing System & Call Center Services Agreement Operational Audit*, January 2004.
[11] Department of Management Services Internal Audit Report Number 2005-61, *Contract Management of Private Correctional Facilities*, June 30, 2005, pages i - iii.
[12] Executive Order 04-45.
[13] The center defined an "outsourced function or service" as "one which was previously performed by state employees and is now operated by a third party entity while the state remains fully responsible for the provision of affected services and maintains control over management and policy decisions." *Center for Efficient Government FAQ's.*

continue to the next stage. However, the board had no authority to accept or deny a project, or challenge the documentation provided by an agency.

The Center began operations in April 2004. The Executive Order stated that it was to continue until January 3, 2007. However, the Governor's veto of SB 1146 on June 27, 2005, effectively prohibited any further funding of the Center.

As a result of the 2003 "Road Map to Excellence" report, DMS began a series of training classes for purchasing employees. The Public Purchasing Training and Certification program[14] trains Purchasing Agents, Purchasing Managers, Certified Contract Managers, and Certified Negotiators. DMS reports that 108 employees out of approximately 700 have completed at least one of these series.[15]

Proposed Changes

The Florida Efficient Government Act

The bill implements the Florida Efficient Government Act (the "Act"). The intent of the Act is to ensure that state agencies, including cabinet agencies, focus on core missions and contract with private-sector vendors, "whenever vendors can more effectively and efficiently provide services and reduce the cost of government." In order to ensure this efficiency, the Act requires agencies to create detailed business cases for all outsourcing projects. These projects are broken down into three levels: those under $1 million in all years of the contract, those between $1 million and $10 million in any fiscal year, and those over $10 million in any fiscal year. Each level has its own set of requirements.

Some contracts are exempt from the Act. Contracts made pursuant to s. 287.057(5) (e),[16] (f),[17] and (g),[18] F.S., are exempt, as are contracts made under s. 287.057(22), F.S.[19] In addition, contracts made under the Consultants' Competitive Negotiation Act[20] are exempt, as are road construction contracts let by the Department of Transportation.

The Council for Efficient Government

The Act creates the Council on Efficient Government (the "council"). The council is tasked with reviewing business cases submitted by agencies, advising agencies on outsourcing projects, and issuing advisory opinions to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The council consists of seven members:

- The Secretary of DMS;
- A cabinet member other than the Governor;
- Two executive-branch agency heads; and
- Three members from the private sector, having complex, large-scale project-implementation experience.

The council is appointed by the Governor and confirmed by the Senate, pursuant to s. 20.052(5), F.S. The bill directs the council to comply with all necessary requirements contained in s. 20.052(3) and (4), F.S., including staggered appointments and compliance with all public records and public meetings laws. The council is chaired by the Secretary of DMS, and DMS is tasked with administrative support.

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[14] See generally http://dms.myflorida.com/purchasing/florida_s_public_purchasing_training_and_certification.

[15] Names of the employees certified under each category are available online at: http://dms.myflorida.com/dms/purchasing/florida_s_public_purchasing_training_and_certification/florida_purchasing_certification_holders.

[16] Certain medical devices.

[17] Personal services contracts (i.e., lectures by individuals, artistic services, legal services).

[18] Continuing education events offered to the general public.

[19] A contract with an independent, non-profit accredited college or university, when such contract is made "on the same basis as [the agency] may contract with any state university or college."

[20] Section 287.055, F.S. The CCNA covers architectural, engineering, and other construction-related services.

Business Case Requirements

The council is directed to receive business cases from an agency for each outsourcing project the agency wishes to undertake. The contents of the required business case include:

- A description of the service to be provided;
- An analysis of the agency's current "in-house" performance of the service;
- The goals and rationale of the project;
- A citation of the legal authority underpinning the project;
- A description of available options for achieving the stated goals;
- An analysis of the advantages and disadvantages of each option;
- A description of the current marketplace for the services;
- A detailed cost-benefit analysis;
- A change management plan regarding the current and future processes involved, among all potentially affected agencies;
- A description of appropriate performance standards;
- Projected timeframes for key events;
- Public records compliance plans;
- Contingency plans for non-performance;
- A transition plan for affected state employees; and
- A description of legislative and budgetary actions necessary to accomplish the project.

For contracts less than $1 million in all fiscal years, a business case must be submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives after the agency has negotiated with the vendor, but 30 days before the contract is signed with the vendor. For contracts between $1 million and $10 million in any fiscal year, an initial business case must be submitted 30 days before the solicitation is released. This is followed by a final business case, to be submitted at least 30 days before the contract is signed. For contracts in excess of $10 million in any fiscal year, the initial business case must be submitted 60 days in advance of the agency's solicitation, and the council must respond to the agency by providing its own evaluation of the business case within 30 days of the solicitation.[21] As in the other project levels, a final business case must be submitted after the negotiation but before the contract is signed.

Contract Requirements

The Act also addresses contracts issued by agencies. In addition to current contract requirements,[22] outsourcing contracts must contain:

- A detailed scope of work;
- A service level agreement describing all requirements and responsibilities of the contractor;
- A cost-schedule, payment terms, and other financial items;
- A specific transition implementation schedule;
- Clear and specific identification of all required performance standards;
- Specific accounting requirements;
- Clear and specific records-access provisions;
- A requirement that the contractor interview and consider for employment all affected state employees;
- A contingency plan in the event of nonperformance by the contractor;
- A requirement that the contractor abide by the state's public records law;
- A statement that the state retains the right to co-negotiate any subcontractor contracts;
- Term for performance bonds; and
- A signature by the agency's licensed attorney.

[21] The council's report also is sent to the Governor, the Speaker of the House of Representatives, and the President of the Senate.
[22] See generally s. 287.058, F.S.

The bill specifies that if the contract does not include all of the above elements it will be considered null and void.

The bill provides that contractors may not be prohibited from lobbying the executive or legislative branch with regard to a current contract held by the contractor. A contractor may not knowingly be involved in the agency's purchase of services from a company in which the contractor has a material interest.

Negotiation & Rulemaking

For any contract in excess of $1 million dollars, at least one of the persons conducting the negotiations for the state must be certified as a contract negotiator.[23] If the value of the contract is in excess of $10 million dollars, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

As part of the negotiation certification process, DMS is granted rulemaking authority to ensure that certified contract negotiators are knowledgeable about negotiation strategies, capable of effectively implementing those strategies, and involved appropriately in the larger procurement process. The rulemaking authority is specifically detailed to address:

- The qualifications required for certification;
- The method of certification; and
- The procedure for involving the certified negotiator.

The bill specifies that at a minimum the certification requirements must include 3 years of experience, a bachelors degree, 48 classroom hours, and successful completion of a written examination.

Other Issues

All solicitations are required to contain a "no contact" provision ensuring that contractors do not attempt to influence or discuss an active solicitation with purchasing employees. Inappropriate contact may be grounds for rejecting a bidder's submission. Current statutes do not address the issue of improper contact, although DMS forms contain language implementing a specific question-and-answer process.[24]

Renewals and extensions of current contracts over $10 million are not permitted before the agency submits a written report regarding the contractor's performance to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

The bill prohibits contract personnel from serving in a supervisory role for state employees.

The bill repeals s. 14.203, F.S., establishing the State Council on Competitive Government.

The bill modifies s. 119.071, F.S., to conform this section of statute with the repeal of s. 14.203, F.S., in the bill.

C. SECTION DIRECTORY:

Section 1 amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 2 creates s. 287.0571, F.S., creating the Florida Efficient Government Act.

Section 3 creates s. 287.05721, F.S., providing definitions for the Florida Efficient Government Act.

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[23] Additional requirements for negotiation teams can be found at s. 287.057(17)(b), F.S.

[24] See Form PUR 1001, paragraph 5.

Section 4 creates s. 287.0573, F.S., establishing the Council on Efficient Government.

Section 5 creates s. 287.0574, F.S., detailing the business case required for each level of outsourcing projects; providing additional contract requirements for such projects.

Section 6 amends s. 287.058, F.S., clarifying a contractor's ability to lobby the government concerning the scope of services already provided by the contractor.

Section 7 creates section 287.074, F.S., relating to actions by contractor personnel and state personnel.

Section 8 prohibits a contractor from participating in agency procurements in which the contractor has a material interest.

Section 9 repeals s. 14.203, F.S., relating to the State Council on Competitive Government.

Section 10 provides funding for 8 full-time equivalent positions in the council.

Section 11 provides funding for Project Management Professional training.

Section 12 expressly includes cabinet agencies in the provisions of the act.

Section 13 amends s. 119.071, F.S., relating to public records exemptions to conform with the repeal of s. 14.203, F.S.

Section 14 provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Department of Management Services
   General Revenue Fund

	FY 2006-07
Recurring Costs:	
Qualified Expenditure Category (10 FTE)	$ 750,000
Negotiation Training	250,000
Total – recurring	$1,000,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DMS is granted rulemaking authority to establish a negotiation certification program. DMS is authorized to set the qualifications required for negotiation certification, the method by which employees attain certification, and the procurement procedures for involving a certified negotiator, during the purchasing process.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the State Administration Appropriations Committee adopted five amendments to the bill. One amendment clarifies that an executive director is appointed by the Secretary of DMS. Minimum requirements were established for the certification of contract negotiators. The Council on Efficient Government's annual report was expanded to include a section on the performance of existing outsourcing contracts. Sanctions were added for noncompliance with the act. The appropriation was reduced to 8 positions and $1 million. The contract requirements were expanded to:

- Include the signature of a licensed agency attorney;
- Include performance bonding;
- Provide for the nullification of the contract if this section of statute is not adhered to;
- Require that the contractor and subcontractors must abide by the public–records laws;
- Stipulate that the state owns any intellectual property created as a result of the contract;
- Stipulate that the state retains the right to co-negotiate any subcontractor contracts; and
- Provide that the state retains the right to purchase any hardware procured by the contractor at a depreciated value.

CHAMBER ACTION

The State Administration Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to procurement of contractual services by a state agency; amending s. 287.057, F.S.; prohibiting a state agency from renewing or amending a contract for outsourcing under certain conditions; requiring certain qualifications for persons chosen to conduct negotiations during specified procurements; requiring the Department of Management Services to adopt rules governing those qualifications; requiring that a specified statement be included in procurements of commodities and services which prohibits contact between respondents and specified employees of the executive and legislative branches; creating s. 287.0571, F.S.; creating the Florida Efficient Government Act; providing legislative intent; providing that procurements of specified commodities and services are not subject to the act; creating s. 287.05721, F.S.; providing definitions; creating s. 287.0573, F.S.; creating the Council on Efficient Government within the

Department of Management Services; providing the purpose and membership of the council; providing duties and responsibilities of the council; requiring the council to review and issue advisory reports on certain state agency procurements; requiring the department to employ adequate number of staff; requiring the council to be headed by an executive director appointed by the Secretary of Management Services; requiring state agencies to submit materials required by the council; creating s. 287.0574, F.S.; providing requirements for certain business cases to outsource by a state agency; requiring a state agency to develop a business case that describes and analyzes a contractual services procurement under consideration; providing that the business case is not subject to challenge or protest under the Administrative Procedure Act; providing required components of a business case; providing contract requirements for a proposed outsourcing; requiring the posting of bond or other security by specified vendors; providing for payment of liquidated damages to the department for breach of contract; providing for nullification of executed contracts for procurement under specified circumstances; providing for legislative review of an agency's appropriations upon a determination that the agency has violated the provisions of the act; amending s. 287.058, F.S.; providing that a contract may not prohibit a contractor from lobbying the executive or legislative branches concerning specified contract issues, within

specified time lines; creating s. 287.074, F.S.; requiring that only public officers or employees shall perform certain functions; prohibiting a contractor from participating in the procurement of contractual services by a state agency; repealing s. 14.203, F.S., which creates the State Council on Competitive Government and provides duties and authority of the council; providing appropriations; providing that certain state agencies are subject to the act; amending s. 119.071, F.S.; removing a cross-reference; clarifying the meaning of "commercial activity" to conform to the removal of the reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (14) and paragraph (b) of subsection (17) of section 287.057, Florida Statutes, are amended, and subsection (26) is added to that section, to read:

287.057 Procurement of commodities or contractual services.--

(14)(a) Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the

commodity or contractual service to be renewed shall be specified in the bid, proposal, or reply. A renewal contract may not include any compensation for costs associated with the renewal. Renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (5)(a) and (c) may not be renewed. With the exception of subsection (13), if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding the sum of $10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(17) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. When the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon rules adopted by the Department of Management Services in order to ensure that certified contract negotiators are knowledgeable about effective

negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator. At a minimum, the qualifications for certification must include at least 3 years of purchasing or contract negotiations experience, a bachelor's degree, successful completion of 48 hours of purchasing or contract negotiations classroom hours and successful completion of a written examination on contracting principles and practices. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

(26) Each solicitation for the procurement of commodities or contractual services shall include the following provision: "Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the execution of the resulting contract, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response."

Section 2. Section 287.0571, Florida Statutes, is created to read:

287.0571 Applicability of ss. 287.0571-287.0574.--

(1) Sections 287.0571-287.0574 may be cited as the "Florida Efficient Government Act."

(2) It is the intent of the Legislature that each state agency focus on its core mission and deliver services effectively and efficiently by leveraging resources and contracting with private-sector vendors whenever vendors can more effectively and efficiently provide services and reduce the cost of government.

(3) It is further the intent of the Legislature that business cases to outsource be evaluated for feasibility, cost-effectiveness, and efficiency before a state agency proceeds with any outsourcing of services.

(4) Sections 287.0571-287.0574 do not apply to:

(a) A procurement of commodities and contractual services listed in s. 287.057(5)(e), (f), and (g) and (22).

(b) A procurement of contractual services subject to s. 287.055.

(c) A contract in support of the planning, development, implementation, operation, or maintenance of the road, bridge, and public transportation construction program of the Department of Transportation.

(d) A procurement of commodities or contractual services which does not constitute an outsourcing of services or activities.

Section 3. Section 287.05721, Florida Statutes, is created to read:

287.05721 Definitions.--As used in ss. 287.0571-287.0574, the term:

(1) "Council" means the Council on Efficient Government.

(2) "Outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.

Section 4. Section 287.0573, Florida Statutes, is created to read:

287.0573 Council on Efficient Government; membership; duties.--

(1) There is created a Council on Efficient Government within the Department of Management Services to review, evaluate, and issue advisory reports on business cases submitted to the council as specified in this section.

(2) The council shall consist of seven members appointed by the Governor pursuant to s. 20.052 and confirmed by the Senate:

(a) The Secretary of Management Services, who shall serve as chair.

(b) A Cabinet member other than the Governor, or his or her senior management or executive staff designee.

(c) Two heads of executive branch agencies.

(d) Three members from the private sector who, collectively, have experience with procurement, successfully increasing operational efficiency, and implementing complex projects in the private-sector business environment. A private-

sector member of the council may not at any time during his or her appointment to the council be registered to lobby the executive or legislative branch.

(3) Within 45 days after the effective date of this section, the Governor shall appoint two private-sector members and two state agency heads for terms of 1 year and one private-sector member and two agency heads for terms of 2 years. Thereafter, each member shall be appointed for a term of 2 years. The private-sector members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(4) A state agency member of the council may not participate in a council review of a business case to outsource if his or her state agency is conducting the proposed outsourcing. A private-sector member of the council may not participate in a council review of a business case to outsource if he or she has a business relationship with an entity that is involved or could potentially be involved in the proposed outsourcing.

(5) A member of the council, except the Cabinet member, may not delegate his or her membership to a designee.

(6) A quorum shall consist of at least four members, including at least two private-sector members.

(7) Any vacancy on the council shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy occurring for a reason other than the expiration of a term shall serve only for the unexpired term of the member's predecessor.

(8) The council shall:

(a) Employ a standard process for reviewing business cases to outsource.

(b) Review and evaluate business cases to outsource as requested by the Governor or the state agency head whose agency is proposing to outsource or as required by ss. 287.0571-287.0574 or by law.

(c) No later than 30 days before a state agency's issuance of a solicitation of $10 million or more, provide to the agency conducting the procurement, the Governor, the President of the Senate, and the Speaker of the House of Representatives an advisory report for each business case reviewed and evaluated by the council. The report must contain all versions of the business case, an evaluation of the business case, any relevant recommendations, and sufficient information to assist the state agency proposing to outsource in determining whether the business case to outsource should be included with the legislative budget request.

(d) Recommend and implement standard processes for state agency and council review, including the development of templates for use by state agencies in submitting business cases to the council, and evaluate state agency business cases to outsource.

(e) Develop standards and best-practice procedures for use by state agencies in evaluating business cases to outsource.

(f) Recommend standards, processes, and guidelines for use by state agencies in developing business cases to outsource.

(g) Incorporate any lessons learned from outsourcing services and activities into council standards, procedures, and guidelines, as appropriate, and identify and disseminate to agencies information regarding best practices in outsourcing efforts.

(h) Develop, in consultation with the Agency for Workforce Innovation, guidelines for assisting state employees whose jobs are eliminated as a result of outsourcing.

(i) Identify and report yearly to the Legislature on innovative methods of delivering government services which would improve the efficiency, effectiveness, or competition in the delivery of government services, including, but not limited to, enterprise-wide proposals.

(j) Report to the Legislature, yearly, on the outsourcing efforts of each state agency. Such reporting shall include, but need not be limited to, the number of outsourcing business cases and solicitations generated by each state agency, the number and dollar value of outsourcing contracts by each state agency, the status of outsourcing contracts and agreements, including performance results and program effectiveness, and, as applicable, contract violations, project slippage, contract extensions, renewals, and amendments.

(9) The council shall make available to the Governor and the Legislature minutes of all meetings, a summary report on each proposal that describes funding options, including the need for any budget amendments or new appropriations, and an annual report of the activities and recommendations of the council.

(10) The department shall employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of this act.

(11) The secretary of the Department of Management Services shall appoint an executive director.

(12) Each state agency shall submit to the council all information, documents, or other materials required by the council or this chapter.

Section 5. Section 287.0574, Florida Statutes, is created to read:

287.0574 Business cases to outsource; review and analysis; requirements.--

(1) A business case to outsource having a projected cost exceeding $10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 60 days before a solicitation is issued. The council shall evaluate the business case analysis and submit the evaluation to the state agency, the Governor, the President of the Senate, and the Speaker of the House of Representatives when the business case evaluation is completed, but at least 30 days before issuing a solicitation.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council,

the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) A proposal to outsource having a projected cost that ranges from $1 million to $10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submission of the business case at least 30 days before issuing a solicitation to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(3) A business case to outsource having a projected cost that is less than $1 million in any fiscal year shall require a final business case analysis conducted by the state agency after the conclusion of any negotiations and provided at least 30 days before execution of a contract to the council. The council shall provide such business cases in its annual report to the Legislature.

(4) For any proposed outsourcing, the state agency shall develop a business case that justifies the proposal to outsource. In order to reduce any administrative burden, the council may allow a state agency to submit the business case in the form required by the budget instructions issued pursuant to s. 216.023, augmented with additional information if necessary,

to ensure that the requirements of this section are met. The business case is not subject to challenge or protest pursuant to chapter 120. The business case must include, but need not be limited to:

(a) A detailed description of the service or activity for which the outsourcing is proposed.

(b) A description and analysis of the state agency's current performance, based on existing performance metrics if the state agency is currently performing the service or activity.

(c) The goals desired to be achieved through the proposed outsourcing and the rationale for such goals.

(d) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(e) A description of available options for achieving the goals.

(f) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(g) A description of the current market for the contractual services that are under consideration for outsourcing.

(h) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All

elements of cost must be clearly identified in the cost-benefit analysis, described in the business case, and supported by applicable records and reports. The state agency head shall attest that, based on the data and information underlying the business case, to the best of his or her knowledge, all projected costs, savings, and benefits are valid and achievable. As used in this section, the term "cost" means the reasonable, relevant, and verifiable cost, which may include, but is not limited to, elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative. As used in this section, the term "savings" means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the contract.

(i) A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.

(j) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(k) The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract.

(l) A plan to ensure compliance with the public records law.

(m) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(n) A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.

(o) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

(p) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

(5) In addition to the contract requirements provided in s. 287.058, each contract for a proposed outsourcing must include, but need not be limited to, the following contractual provisions:

(a) A scope-of-work provision that clearly specifies each service or deliverable to be provided, including a description of each deliverable or activity that is quantifiable, measurable, and verifiable. This provision must include a clause

that states that if a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary and verified to have been performed by the agency within the 12 months before the execution of the contract, such service or deliverable will be provided by the contractor through the identified contract amendment process.

(b) A service-level agreement provision describing all services to be provided under the terms of the agreement, the state agency's service requirements and performance objectives, specific responsibilities of the state agency and the contractor, and the process for amending any portion of the service-level agreement. Each service-level agreement must contain an exclusivity clause that allows the state agency to retain the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

(c) A provision that identifies all associated costs, specific payment terms, and payment schedules, including provisions governing incentives and financial disincentives and criteria governing payment.

(d) A provision that identifies a clear and specific transition plan that will be implemented in order to complete all required activities needed to transfer the service or activity from the state agency to the contractor and operate the service or activity successfully.

(e) A performance standards provision that identifies all required performance standards, which must include, at a minimum:

1. Detailed and measurable acceptance criteria for each deliverable and service to be provided to the state agency under the terms of the contract which document the required performance level.

2. A method for monitoring and reporting progress in achieving specified performance standards and levels.

3. The sanctions or disincentives that shall be imposed for nonperformance by the contractor or state agency.

(f) A provision that requires the contractor and its subcontractors to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles.

(g) A requirement authorizing state access to and audit of all records related to the contract or any responsibilities or functions under the contract for state audit and legislative oversight purposes.

(h) A requirement for service organization audits in accordance with professional auditing standards, if appropriate.

(i) A provision that requires the contractor to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

(j) A contingency plan provision that describes the mechanism for continuing the operation of the service or activity, including transferring the service or activity back to the state agency or successor contractor if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

(k) A provision that requires the contractor and its subcontractors to comply with public records laws, specifically to:

1. Keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity.

2. Provide the public with access to such public records on the same terms and conditions under which the state agency would provide the records and at a cost that does not exceed that provided in chapter 119 or as otherwise provided by law.

3. Ensure that records that are exempt or confidential and exempt are not disclosed except as authorized by law.

4. Meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the state agency in a format that is compatible with the information technology systems of the state agency.

(l) A provision that specifies the ownership of intellectual property and any rights of the state agency to use, modify, reproduce, or disseminate the intellectual property if the contract involves the development or creation of such intellectual property. This paragraph does not provide the specific authority needed by an agency to obtain a copyright or trademark.

(m) A provision that states that the agency retains the right, in its sole discretion, to co-negotiate any third-party

or subcontractor contracts, excluding any terms relating to financial compensation.

(n) If applicable, a provision that allows the agency to purchase from the contractor, at its depreciated value, assets used by the contractor in the performance of the contract. If assets have not depreciated, the agency shall retain the right to negotiate to purchase at an agreed-upon cost.

(o) Each vendor in a major procurement in excess of $25,000, and any other vendor if the department deems it necessary to protect the state's financial interest, shall, at the time of executing the contract with the department, post an appropriate bond with the department in an amount determined by the department to be adequate to protect the state's interests, but not higher than the full amount estimated to be paid annually to the vendor under the contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, file with the department an irrevocable letter of credit acceptable to the department in an amount determined by the department to be adequate to protect the state's interests or deposit and maintain with the Chief Financial Officer securities that are interest bearing or accruing and that, with the exception of those specified in subparagraphs 1. and 2., are rated in one of the four highest classifications by an established nationally recognized investment rating service. Securities eligible under this subsection shall be limited to:

1. Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of

this state or under the laws of the United States and having their principal place of business in this state.

2. United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest.

3. General obligation bonds and notes of any political subdivision of the state.

4. Corporate bonds of any corporation that is not an affiliate or subsidiary of the depositor.

Such securities shall be held in trust and shall have at all times a market value at least equal to an amount determined by the department to be adequate to protect the state's interests, which amount shall not be set higher than the full amount estimated to be paid annually to the vendor under contract.

(p) Every contract in excess of $25,000 entered into by the department pursuant to this section shall contain a provision for payment of liquidated damages to the department for any breach of contract by the vendor. The department may require a liquidated damages provision in any contract if the department deems it necessary to protect the state's financial interest.

(q) Every contract entered into by the department pursuant to this section shall have as one of the department's signatories to the contract an attorney licensed by the Florida Bar Association.

(6) Any contract resulting from an outsourcing which does not include the requirements set forth in subsection (5) shall be null and void.

(7) Unless otherwise exempted from the provisions of this act, no agency shall proceed with the solicitation of a procurement for outsourcing if the Governor, the President of the Senate, or the Speaker of the House of Representatives objects, for any reason, to the initial business case analysis provided by the agency for the outsourcing initiative.

(8) Unless otherwise exempted from the provisions of this act, no agency shall proceed with the execution of a contract for outsourcing if the Governor, the President of the Senate or the Speaker of the House of Representatives objects, for any reason, to the final business case analysis provided by the agency for the outsourcing initiative.

(9) Unless otherwise exempted from the provisions of this act, any agency that violates the provisions of this act shall be subject to a review by the Auditor General of actions taken by the agency. The Auditor General shall provide a report of findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives. If the Auditor General finds that the agency has violated the provisions of this act, the Legislature shall conduct an immediate review of the agency's appropriations to determine the appropriate actions to be taken for placing the agency's funds in mandatory reserve.

Section 6. Subsection (6) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.--

(6) A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term. The provisions of this subsection are supplemental to the provisions of ss. 11.062 and 216.347 and any other law prohibiting the use of state funds for lobbying purposes.

Section 7. Section 287.074, Florida Statutes, is created to read:

287.074 Prohibited actions by contractor personnel.--

(1) Only a public officer or a public employee upon whom the public officer has delegated authority shall, consistent with law, take actions, including, but not limited to:

(a) Selecting state employees;

(b) Approving position descriptions, performance standards, or salary adjustments for state employees; and

(c) Hiring, promoting, disciplining, demoting, and dismissing a state employee.

(2) Only a public officer shall, consistent with law, commission and appoint state officers.

Section 8. A contractor, as defined in chapter 287, Florida Statutes, or its employees, agents, or subcontractors, may not knowingly participate, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or contractual services by a state agency from an entity in which

the contractor, or its employees, agents, or subcontractors, has a material interest.

Section 9. Section 14.203, Florida Statutes, is repealed.

Section 10. For the 2006-2007 fiscal year, the sum of $750,000 in recurring funds from the General Revenue Fund in a qualified expenditure category is appropriated and eight full-time equivalent positions are authorized to the Department of Management Services to carry out the activities of the Council on Efficient Government as provided in this act.

Section 11. The Department of Management Services may implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute. For the 2006-2007 fiscal year, the sum of $250,000 in recurring funds from the General Revenue Fund in a qualified expenditure category is appropriated to the Department of Management Services to implement this program. The Department of Management Services, in consultation with agencies subject to this act, shall identify personnel to participate in this training based on requested need and shall ensure that each agency requesting training is represented. The Department of Management Services may remit payment for this training on behalf of all participating personnel.

Section 12. Notwithstanding any law to the contrary, a state agency under the individual control of the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture are subject to this act.

Section 13. Paragraph (a) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(5) OTHER PERSONAL INFORMATION.--

(a)1. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes. The Legislature is also cognizant of the fact that the social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. The Legislature intends to monitor the commercial use of social security numbers held by state agencies in order to maintain a balanced public policy.

2. An agency shall not collect an individual's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented. An agency that

collects social security numbers shall also segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number be more easily redacted, if required, pursuant to a public records request. An agency collecting a person's social security number shall, upon that person's request, at the time of or prior to the actual collection of the social security number by that agency, provide that person with a statement of the purpose or purposes for which the social security number is being collected and used. Social security numbers collected by an agency shall not be used by that agency for any purpose other than the purpose stated. Social security numbers collected by an agency prior to May 13, 2002, shall be reviewed for compliance with this subparagraph. If the collection of a social security number prior to May 13, 2002, is found to be unwarranted, the agency shall immediately discontinue the collection of social security numbers for that purpose.

3. Effective October 1, 2002, all social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to all social security numbers held by an agency before, on, or after the effective date of this exemption.

4. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

5. An agency shall not deny a commercial entity engaged in the performance of a commercial activity, which, for purposes of this section, means an activity that provides a product or service that is available from a private source, ~~as defined in s. 14.203~~ or its agents, employees, or contractors access to social security numbers, provided the social security numbers will be used only in the normal course of business for legitimate business purposes, and provided the commercial entity makes a written request for social security numbers, verified as provided in s. 92.525, legibly signed by an authorized officer, employee, or agent of the commercial entity. The verified written request must contain the commercial entity's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the normal course of business for legitimate business purposes. The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 8. An agency may request any other information reasonably necessary to verify the identity of the entity requesting the social security numbers and the specific purposes for which such numbers will be used; however, an agency has no duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of

crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.

6. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Any public officer who violates this paragraph is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. A commercial entity that provides access to public records containing social security numbers in accordance with this paragraph is not subject to the penalty provisions of this subparagraph.

7.a. On or after October 1, 2002, a person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28 may not include any person's social security number in that document, unless otherwise expressly required by law. If a social security number is or has been included in a document presented to the county recorder for recording in the official records of the county before, on, or after October 1, 2002, it may be made available as part of the official record available for public inspection and copying.

b. Any person, or his or her attorney or legal guardian, has the right to request that a county recorder remove, from an

image or copy of an official record placed on a county recorder's publicly available Internet website or a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public by such recorder, his or her social security number contained in that official record. Such request must be made in writing, legibly signed by the requester and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. The county recorder has no duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee shall not be charged for the redaction of a social security number pursuant to such request.

c. A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post, on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

(I) On or after October 1, 2002, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

(II) Any person has a right to request a county recorder to remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a

publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. No fee will be charged for the redaction of a social security number pursuant to such a request.

d. Until January 1, 2007, if a social security number, made confidential and exempt pursuant to this paragraph, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (b) is or has been included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number, or by the holder's attorney or legal guardian, in a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court. The clerk of the circuit court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

e. Any person who prepares or files a document to be recorded in the official records by the county recorder as provided in chapter 28 may not include a person's social security number or complete bank account, debit, charge, or credit card number in that document unless otherwise expressly required by law. Until January 1, 2007, if a social security number or a complete bank account, debit, charge, or credit card number is or has been included in a document presented to the county recorder for recording in the official records of the county, such number may be made available as part of the official record available for public inspection and copying. Any person, or his or her attorney or legal guardian, may request that a county recorder remove from an image or copy of an official record placed on a county recorder's publicly available Internet website, or a publicly available Internet website used by a county recorder to display public records outside the office or otherwise made electronically available outside the county recorder's office to the general public, his or her social security number or complete account, debit, charge, or credit card number contained in that official record. Such request must be legibly written, signed by the requester, and delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the document that contains the number to be redacted. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for redacting such numbers.

f. Subparagraphs 2. and 3. do not apply to the clerks of the court or the county recorder with respect to circuit court records and official records.

g. On January 1, 2007, and thereafter, the clerk of the circuit court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (b), and must keep social security numbers confidential and exempt as provided for in subparagraph 3., without any person having to request redaction.

8. Beginning January 31, 2004, and each January 31 thereafter, every agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives listing the identity of all commercial entities that have requested social security numbers during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding its need for social security numbers. If no disclosure requests were made, the agency shall so indicate.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

10. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

11. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 14. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7221 PCB ETEL 06-01 Campaign Finance
SPONSOR(S): Ethics & Elections Committee and Reagan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Ethics & Elections Committee	9 Y, 2 N	Mitchell	Mitchell
1) State Administration Council		Mitchell	Bussey
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7221 makes a number of changes with regard to disclosure for certain entities that produce electioneering communications (EC) under ch. 106, F.S. The bill:

- Requires organizations that make expenditures for EC's (ECO's) to register, if not previously registered, and initially report, *within 48 hours*, their contributions and expenditures since the last general election. Reporting will be done with the Division of Elections.
- Requires ECO's to "disaggregate" contributions they have received from section 527 organizations, and list those made to such *section 527 organizations* that exceed $10,000.
- Codifies and expands the disclosure and reporting requirements of House Rule 15.3 in new section 106.0701, F.S., and requires registration with the Division of Elections.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – The bill will require certain groups that run last minute EC's to report their contributions and expenditures in a timelier manner, thereby allowing the public to know more about the source of their funding. The bill also requires legislators, statewide officeholders and candidates for such offices to report activity made on behalf of certain tax exempt organizations with the Division of Elections.

B. EFFECT OF PROPOSED CHANGES:

Current Situation –

Section 527 Organizations

Section 527 of the Code has been around for over 30 years. It was added to the Internal Revenue Code (Code) in 1974 to provide an exemption from federal income tax and gift tax to "political organizations." The rationale for creating section 527 was that campaigns, party committees and political action committees should not pay taxes on funds contributed to such entities and used for political purposes.[1]

Beginning in 1996 the IRS, in several private letter rulings, said that groups seeking to influence elections through candidate-specific issue advertising would qualify as political organizations, regardless of whether they were registered with the FEC or state election agencies.[2]

Since 2004, EC's in Florida have been conducted primarily by groups know as "527 political organizations." A political organization (PO) is a creature of federal tax law, organized under section 527 of the Code, and defined as a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an "exempt function." An "exempt function" of a "political organization" is defined as "influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization. . . ."[3] PO's that accept contributions and make expenditures for the purpose of influencing "the election, nomination, or the appointment of any individual to Federal, State, or local public office" must file certain forms with the IRS as a condition of tax-exempt status.[4]

As a second condition of tax-exempt status, persons making contributions that aggregate $200 or more, and persons receiving $500 or more, per calendar year must be disclosed. Otherwise, the PO is subject to tax on the contributions and expenditures not disclosed at a rate of 35% (the highest corporate tax rate).

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[1] http://www.brook.edu/gs/cf/headlines/527_intro.htm
[2] Id.
[3] 26 U.S.C. 527(e)(2).
[4] A PO that expects to receive $25,000 or more in gross receipts in any taxable year must file an initial report with the IRS, notifying the agency of its tax-exempt status.

Federal Reporting Requirements for Section 527 Organizations

Section 527 organizations are generally required to file one or more of the following with the Internal Revenue Service (IRS):

- An initial notice (Form 8871)
- Periodic reports on contributions and expenditures (Form 8872)
- Annual income tax returns
- Annual information returns

State and local candidate campaigns as well as state and local committees of political parties are political organizations that are not required to file the initial notice. In addition, changes made in 2002 to the federal law exempt "qualified state or local political organizations" (QSLPO's) from Form 8872 reporting, if they are subject to state laws that already require the reporting of contributions and expenditures that they would otherwise have to report on Form 8872. Political committees organized under s. 106.03, F.S., and committees of continuous existence organized under s. 106.04, F.S., are QSLPO entities that do not have to report contributions and expenditures to the IRS.

EC's in Florida

In 2004, the Florida Legislature passed campaign finance legislation designed to regulate "issue advocacy," advertisements that do not contain any express advocacy such as "vote for" "elect" or "vote against" when referring to a particular candidate or ballot issue.[5]

Florida law now regulates what are known as "EC's" --- paid issue advocacy advertisements affecting candidates or ballot issues that are run close to an election (after the end of the qualifying period) and, for candidate ads, are targeted to 1,000 or more persons in the district the candidate seeks to represent. s. 106.011(18), F.S. There is a regulatory scheme with the Federal Election Commission governing similar advertising in federal races. [6]

EC's in Florida are regulated in essentially the same manner as political committees and persons making independent expenditures with regard to registration, reporting, and disclaimer requirements. s. 106.071, F.S. Individuals who make expenditures for EC's exceeding $100 are required to file a report of their expenditures at the same time, in the same manner, and subject to the same penalties as persons making "independent expenditures" that expressly advocate for or against a candidate or ballot issue. Independent expenditures are reported on the same schedule as periodic campaign finance reporting by political committees (and candidates not accepting public financing).[7] If an issue advocacy advertisement is published *prior to the end of the qualifying period* it is not considered an EC, and no registration or reporting requirements are triggered for the individual or group running the advertisement.

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[5] CS/SB 2346/516; ch. 2004-252, Laws of Fla.

[6] As required by the Bipartisan Campaign Reform Act of 2002, there are rules governing EC's on television and in radio communications that refer to a clearly identified federal candidate and are distributed to the relevant electorate within 60 days prior to a general election, or 30 days prior to a primary election. The regulations require, among other things, that individuals and other groups not registered with the FEC who make EC's costing more than $10,000 in the aggregate disclose that activity *within 24 hours* of the distribution of the communication.

[7] Reporting is required on a quarterly basis, with the frequency of reporting increasing after the qualifying period. Periodic reporting dates during an election year are the 32nd, 18th and 4th day immediately preceding the first primary election, and the 46th, 32nd, 18th and 4th day immediately preceding the general election). s. 106.07(1), F.S.

In 2005, the Division of Elections was asked whether an EC could be coordinated with or made upon consultation with a candidate affected by the communication. In DE 05-04, the Division opined that EC's do not constitute a contribution to or on behalf of a candidate who is referenced or depicted in the electioneering communication, and that candidates may indeed coordinate and consult with groups who conduct EC's.

Thus, under current law, a candidate may solicit funds for a 527 political organization that is not yet registered with the state's Division of Elections and then coordinate with that organization its expenditures with respect to EC's that may be run on the candidate's behalf. Essentially, the 527 organization becomes a supplemental campaign account for a candidate that is not subject to the contribution limits in s. 106.08, F.S. The 527 organization would be subject to periodic filing requirements with the IRS, but in an election year, the IRS permits either quarterly or monthly reporting, with a 12-day pre-election and 30 day post-election report, under either option. Again, no state registration or reporting requirements are triggered until the organization actually conducts an EC, and even then, the organization has 10 days to register with the Division of Elections.[8]

A recent article in the *Palm Beach Post* highlights how the current state reporting requirement operates in certain circumstances.[9] A 527 organization[10] began to run ads attacking a particular House candidate in August 2004, just a few weeks before the September 7, 2004 primary. It made its first expenditure on August 25, 2004, and had registered as an ECO on August 10, 2004, with the Division of Elections.[11] The ECO used money transferred from a 527 organization[12] that was controlled by the same individuals. The ECO received a total of $250,000 from the 527 organization between August 8, 2004 and October 8, 2004, and spent all of those funds received during that two-month period. It closed on October 18, 2004, according to reports filed with the Division of Elections. There are currently 26 active ECO's, according to the Division of Elections.

Proposed Situation –

Under current law, a 527 political organization does not have to register or report *any activity* in Florida until 10 days after it makes an expenditure for an EC. An "expenditure" for an EC is made when the earliest of the following occurs:

- A person executes a contract for applicable goods or services;
- A person makes payment, in whole or in part, for applicable goods or services; or
- The electioneering communication is publicly disseminated.

s. 106.011(4)(b), F.S.

The bill requires the registration, if not previously filed, and the initial report of an ECO to be filed *within 48 hours* after an EC is made. The initial report would be made using the Division's electronic filing system and would include all contributions and expenditures made since the date of the last general election. Current law requires an ECO to only report activity during the most recent reporting period.

The bill also requires, for purposes of discussion, "disaggregation" of certain contributions made to an ECO. For example, if an ECO receives any contributions from a 527 political organization, the

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[8] s. 106.03(1), F.S.
[9] palmbeachpost.com; S.V. Date, Jennifer Sorentrue, Feb. 13, 2006.
[10] Floridians for Integrity in Government.
[11] Information taken from the Division of Elections web site, http://election.dos.state.fl.us/
[12] People for Integrity in Government.

bill requires the ECO to also include all contributions exceeding $10,000 made to the donor 527 political organization since the last general election.

House Rule 15.3(3) currently requires a member to register and disclose any solicitation activity made on behalf of a political committee, CCE, or organization established under section 527 or 501(c)(4) of the Internal Revenue Code. An affected member must also create a public web site containing all contributions and expenditures. House Rule 15.3(3) provides:

> Any member who directly or indirectly solicits, causes to be solicited, or accepts any contributions to an organization described under section 527 or section 501(c)(4) of the Internal Revenue Code, a political committee, or a committee of continuous existence must immediately disclose such activity to, and register with, the Rules & Calendar Council. Upon registration with the council, the member shall promptly create a public website that contains a mission statement and the names of representatives associated with the organization. All contributions received must be disclosed on the website within 10 business days after deposit, together with the name, address, and occupation of the donor. All expenditures made by the organization must be individually disclosed on the website within 10 business days after being made.

The bill essentially codifies the reporting and disclosure requirements of House Rule 15.3(3), and expands its provisions to include statewide officers and candidates for legislative and statewide office. It also reduces the time period for disclosure of contributions and expenditures from 10 to 5 business days,[13] and clarifies that the disclosure provisions do not apply to a candidate's own campaign account, a person acting on behalf of a political party organized under ch. 103, or to a person associated with a qualified charity organization. The bill would also require registration and reporting with the Division of Elections, rather than the House Rules and Calendar Council.

HB 7221 is effective July 1, 2006.

C. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There may be a nominal yet indeterminate cost to the Division of Elections to allow additional campaign-related filings on its electronic filing system in accordance with the proposed requirements in s. 106.0701, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[13] Contributions to a candidate or political committee must be deposited within 5 business days of receipt. s. 106.05, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be some additional costs to persons and organizations that must file reports with the Division of Elections.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to campaign financing; amending s. 106.011, F.S.; amending a definition; providing additional registration and reporting requirements for organizations making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications; amending s. 106.07, F.S; providing additional reporting requirements for certain contributions made to persons making expenditures for electioneering communications; creating s. 106.0701, F.S.; providing registration and reporting requirements for legislators, statewide officeholders, and candidates for such offices relating to contributions to organizations exempt under specified provisions of the Internal Revenue Code; providing an exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 106.011, Florida Statutes, is amended to read:

106.011 Definitions.--As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1)

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. Organizations which are certified by the Department of

State as committees of continuous existence pursuant to s. 106.04, national political parties, and the state and county executive committees of political parties regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Organizations whose activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications; however, such organizations shall be required to register and report contributions, including those received from committees of continuous existence, and expenditures in the same manner, at the same time, subject to the same penalties, and with the same filing officer as a political committee supporting or opposing a candidate or issue contained in the electioneering communication, provided, however, that the registration, if not previously filed, and initial report of such organization shall be made within 48 hours after making an electioneering communication and shall include all contributions received and expenditures made since the date of the last general election. If any such organization would be required to register and report with more than one filing officer, the organization shall

register and report solely with the Division of Elections.

Section 2. Paragraph (a) of subsection (4) of section 106.07, Florida Statutes, is amended to read:

106.07 Reports; certification and filing.--

(4)(a) Each report required by this section shall contain:

1. The full name, address, and occupation, if any of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.

5. The total sums of all loans, in-kind contributions, and

other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually.

8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

11. A copy of each credit card statement which shall be

included in the next report following receipt thereof by the candidate or political committee. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

14. For any contribution made by an entity organized under s. 527 of the Internal Revenue Code to a person making an expenditure for an electioneering communication, the following additional information:

a. The name, address, and contact person of the s. 527 entity.

b. The date the s. 527 entity was formed.

c. A list of all contributions that exceed $10,000 received by the s. 527 entity since the date of the last general election, and the name and address of each contributor, including each single contributor that in the aggregate made contributions exceeding $10,000 during the period.

Section 3. Section 106.0701, Florida Statutes, is created to read:

106.0701 Solicitation of contributions and disclosure; registration.--

(1)(a) A member of the Legislature, a statewide officeholder, or a candidate for legislative or statewide office who directly or indirectly solicits, causes to be solicited, or accepts any contributions to an organization that is exempt from taxation under s. 527 or s. 501(c) of the Internal Revenue Code which such person, in whole or in part, establishes, maintains, or controls shall immediately disclose such activity to and register with the division.

(b) Upon registration with the division, a person subject to the requirements of paragraph (a) shall promptly create a public website that contains a mission statement and the names of persons associated with the organization.

(c) All contributions received shall be disclosed on the website within 5 business days after deposit, together with the name, address, and occupation of the donor. All expenditures by the organization shall be individually disclosed on the website within 5 business days after being made.

(2) The requirements of subsection (1) do not apply to a candidate's own campaign account for state or federal office, to an individual listed in subsection (1) who is associated with a political party organized under chapter 103, or to a qualified charity organized under s. 501(c) of the Internal Revenue Code.

Section 4. This act shall take effect on July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7223 PCB GO 06-04 OGSR Medical and Health Information
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 0 N	Williamson	Williamson
1) Health Care Regulation Committee	(W/D)		
2) State Administration Council		Williamson	Bussey
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public records exemption for medical information, health information, and financial account numbers held by the Department of Health. The bill reenacts and expands the exemption for medical and health records making it applicable to all agencies. It repeals the public records exemption for financial account numbers because it is duplicative of an exemption found in current law.

This bill provides for retroactive application and for future review and repeal of the exemption. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal non-recurring fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill expands the public records exemption thereby decreasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Financial Account Numbers
Chapter 119, F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers (financial account numbers).[1] The exemption applies to all agencies.[2]

Medical and Health Information
Current law provides several agency-specific public records exemptions for medical and health information. For example, the Florida Automobile Joint Underwriting Association has a public records exemption for information relating to the medical condition or medical status of an employee.[3] Medical information pertaining to an agency employee is exempt from public records requirements.[4] The health records of a veteran admitted to residency at the Veterans' Domiciliary Home of Florida are confidential and exempt.[5] An exemption applicable to all agencies for medical and health information does not exist.

Department of Health
Current law provides a public records exemption for personal identifying information and financial account numbers contained in records relating to a person's health or eligibility for health-related services when in the possession of the Department of Health.[6] The information is confidential and exempt[7] and may be released:

- With the written consent of the person or the person's legal representative.
- In a medical emergency.
- By court order.
- To a health research entity pursuant to a research protocol approved by the department; however, the department may deny the entity's request if certain requirements are not met.

Pursuant to the Open Government Sunset Review Act,[8] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

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[1] Section 119.071(5)(b), F.S.
[2] "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government. It also includes the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any public or private agency, person, partnership, corporation, or business acting on behalf of a public agency. Section 119.011(2), F.S.
[3] Section 627.311(4), F.S.
[4] Section 119.071(4)(b), F.S.
[5] Section 296.09, F.S.
[6] Section 119.0712(1), F.S.
[7] There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[8] Section 119.15, F.S.

Effect of Bill

The bill reenacts and expands the public records exemption for the Department of Health. The bill expands the exemption to include medical and health information held by *any* agency, thus, creating a general exemption from public records requirements. It provides for retroactive application of the exemption.[9]

The bill removes the exemption for financial account numbers because it is duplicative of the general exemption[10] found in current law.

Current law authorizes the release of medical or health information to a health research entity that has entered into a data-use agreement with the department. The bill continues this exception; however, it reorganizes the requirements that must be included in the data-use agreement.

The bill extends the repeal date from October 2, 2006, to October 2, 2011. It also provides a statement of public necessity as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact and expand the public records exemption for medical and health records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[9] In 2001, the Florida Supreme Court ruled that a public records exemption does not apply retroactively unless the legislation clearly provides for retroactive application of the exemption. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

[10] Section 119.071(5)(b), F.S.

D. FISCAL COMMENTS:

The bill may create a minimal non-recurring increase in state and local government expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment due to training employees who are responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as employees must be retrained. Because the bill expands the public records exemption, employee-training activities are required thus causing a minimal nonrecurring increase in expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill *expands* the current exemption, essentially creating a new public records exemption. Thus, the bill includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act
The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is

narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding medical records and health records; amending s. 119.0712, F.S., which provides an exemption from public records requirements for personal identifying information, bank account numbers, and debit, charge, and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services; expanding the exemption to include medical records or health records held by an agency; providing for retroactive application of the exemption; reorganizing the exemption; providing for future review and repeal; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 119.0712, Florida Statutes, is redesignated as paragraph (g) of subsection (5) of section 119.071, Florida Statutes, and amended to read:

119.071 General exemptions from inspection or copying of public records.--

(5) OTHER PERSONAL INFORMATION.--

(g)1.~~(1)~~ ~~DEPARTMENT OF HEALTH.--~~Medical records or health records ~~All personal identifying information; bank account numbers; and debit, charge, and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services~~ held by an agency

before, on, or after October 1, 2006, ~~the Department of Health~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~, except as otherwise provided in this subsection~~.

2. Except as otherwise provided by law, medical records or health records ~~information made confidential and exempt by this subsection~~ shall be disclosed:

a.~~(a)~~ With the express written consent of the individual or the individual's legally authorized representative.

b.~~(b)~~ In a medical emergency, but only to the extent necessary to protect the health or life of the individual.

c.~~(c)~~ By court order upon a showing of good cause.

d.~~(d)~~ To a health research entity performing research of scientific merit~~,~~ if the request is not an administrative burden for the agency and the entity enters into a data-use agreement with the agency. The data-use agreement must provide that the entity will:

(I) Use ~~seeks~~ the records ~~or data~~ pursuant to a research protocol approved by the agency and a human studies institutional review board. ~~department,~~

(II) Not permit the identification of persons.

(III) Not use the records for any other purpose.

(IV) Not conduct intrusive follow-back contacts.

(V) Maintain ~~Maintains~~ the records ~~or data~~ in accordance with the approved protocol.

(VI) Acknowledge that the copies of records issued pursuant to this subparagraph are the property of the agency.

(VII) Destroy the records after the research is concluded.

(VIII) Notify the agency in writing once the entity has destroyed the records.~~, and~~

(IX) Pay the copying fees provided in ~~enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with~~ s. 119.07(4). ~~The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.~~

3. This paragraph ~~subsection~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011 ~~2006~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that medical records or health records held by an agency before, on, or after October 1, 2006, be made confidential and exempt from public records requirements, with certain exceptions. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private

health care sectors. For these reasons, the individual's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption. The Legislature further finds it is a public necessity to protect a person's medical records or health records held by an agency because the release of such records could be defamatory to the person or could cause unwarranted damage to the name or reputation of the person.

Section 3. This act shall take effect October 1, 2006.

State Administration Council

Friday, April 21, 2006
3:30PM – 5:30PM
17 HOB

Addendum A

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **1165 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Barreiro offered the following:

Amendment

Remove lines 66-67 and insert:

Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7185 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration

Representative(s) Rivera offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (14) and paragraph (b) of subsection (17) of section 287.057, Florida Statutes, are amended, and subsection (26) is added to that section, to read:

287.057 Procurement of commodities or contractual services.--

(14)(a) Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be renewed shall be specified in the bid, proposal, or reply. A renewal contract may not include any compensation for costs associated with the renewal. Renewals shall be contingent upon satisfactory

performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (5)(a) and (c) may not be renewed. With the exception of subsection (13), if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding the sum of $10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(17) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. When the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon rules adopted by the Department of Management Services in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a

Project Management Professional, as certified by the Project Management Institute.

(26) Each solicitation for the procurement of commodities or contractual services shall include the following provision: "Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response."

Section 2. Section 287.0571, Florida Statutes, is created to read:

287.0571 Applicability of ss. 287.0571-287.0574.--

(1) Sections 287.0571-287.0574 may be cited as the "Florida Efficient Government Act."

(2) It is the intent of the Legislature that each state agency focus on its core mission and deliver services effectively and efficiently by leveraging resources and contracting with private-sector vendors whenever vendors can more effectively and efficiently provide services and reduce the cost of government.

(3) It is further the intent of the Legislature that business cases to outsource be evaluated for feasibility, cost-effectiveness, and efficiency before a state agency proceeds with any outsourcing of services.

(4) Sections 287.0571-287.0574 do not apply to:

(a) A procurement of commodities and contractual services listed in s. 287.057(5)(e), (f), and (g) and (22).

(b) A procurement of contractual services subject to s. 287.055.

(c) A contract in support of the planning, development, implementation, operation, or maintenance of the road, bridge, and public transportation construction program of the Department of Transportation.

(d) A procurement of commodities or contractual services which does not constitute an outsourcing of services or activities.

Section 3. Section 287.05721, Florida Statutes, is created to read:

287.05721 Definitions.--As used in ss. 287.0571-287.0574, the term:

(1) "Council" means the Council on Efficient Government.

(2) "Outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.

Section 4. Section 287.0573, Florida Statutes, is created to read:

287.0573 Council on Efficient Government; membership; duties.--

(1) There is created a Council on Efficient Government within the Department of Management Services to review, evaluate, and issue advisory reports on business cases submitted to the council as specified in this section.

(2) The council shall consist of seven members appointed by the Governor pursuant to s. 20.052:

(a) The Secretary of the Department of Management Services, who shall serve as chair.

(b) A Cabinet member other than the Governor, or his or her senior management or executive staff designee.

(c) Two heads of executive branch agencies.

(d) Three members from the private sector who are subject to confirmation by the Senate and who, collectively, have experience with procurement, successfully increasing operational efficiency, and implementing complex projects in the private-sector business environment. A private-sector member of the council may not at any time during his or her appointment to the council be registered to lobby the executive or legislative branch.

(3) Within 45 days after the effective date of this section, the Governor shall appoint two private-sector members and one state agency head for terms of 1 year and one private-sector member and one agency head for terms of 2 years. Thereafter, each member shall be appointed for a term of 2 years. The private-sector members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061.

(4) A member of the council may not participate in a council review of a business case to outsource if his or her state agency is conducting the proposed outsourcing or, in the case of a private-sector member, if he or she has a business relationship with an entity that is involved or could potentially be involved in the proposed outsourcing.

(5) A member of the council, except the cabinet member, may not delegate his or her membership to a designee.

(6) A quorum shall consist of at least four members, including at least two private-sector members.

(7) Any vacancy on the council shall be filled in the same manner as the original appointment, and any member appointed to fill a vacancy occurring for a reason other than the expiration of a term shall serve only for the unexpired term of the member's predecessor.

(8) The council shall:

(a) Employ a standard process for reviewing business cases to outsource.

(b) Review and evaluate business cases to outsource as requested by the Governor or the state agency head whose agency is proposing to outsource or as required by ss. 287.0571-287.0574 or by law.

(c) No later than 30 days before a state agency's issuance of a solicitation of $10 million or more, provide to the agency conducting the procurement, the Governor, the President of the Senate, and the Speaker of the House of Representatives an advisory report for each business case reviewed and evaluated by the council. The report must contain all versions of the business case, an evaluation of the business case, any relevant recommendations, and sufficient information to assist the state agency proposing to outsource in determining whether the business case to outsource should be included with the legislative budget request.

(d) Recommend and implement standard processes for state agency and council review and evaluate state agency business cases to outsource, including templates for use by state agencies in submitting business cases to the council.

(e) Develop standards and best-practice procedures for use by state agencies in evaluating business cases to outsource.

(f) Recommend standards, processes, and guidelines for use by state agencies in developing business cases to outsource.

(g) Incorporate any lessons learned from outsourcing services and activities into council standards, procedures, and guidelines, as appropriate, and identify and disseminate to agencies information regarding best practices in outsourcing efforts.

(h) Develop, in consultation with the Agency for Workforce Innovation, guidelines for assisting state employees whose jobs are eliminated as a result of outsourcing.

(9) The council shall identify and report yearly to the Legislature on:

(a) Innovative methods of delivering government services which would improve the efficiency, effectiveness, or competition in the delivery of government services, including, but not limited to, enterprise-wide proposals.

(b) Outsourcing efforts of each state agency which shall include, but not be limited to, the number of outsourcing business cases and solicitations, the number and dollar value of outsourcing contracts, an explanation of agency progress on achieving the cost-benefit analysis schedule as required by s. 287.0574(4)(h), descriptions of performance results, as applicable, any contract violations or project slippages, and the status of extensions, renewals, and amendments of outsourcing contracts.

(10) The department shall employ an adequate number of staff who collectively possess significant expertise and experience as required to carry out the responsibilities of this act.

(11) The secretary of the Department of Management Services shall appoint an executive director.

(12) Each state agency shall submit to the council all information, documents, or other materials required by the council or this chapter.

Section 5. Section 287.0574, Florida Statutes, is created to read:

287.0574 Business cases to outsource; review and analysis; requirements.--

(1) A business case to outsource having a projected cost exceeding $10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submitted to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 60 days before a solicitation is issued. The council shall evaluate the business case analysis and submit an advisory report to the state agency, the Governor, the President of the Senate, and the Speaker of the House of Representatives when the advisory report is completed, but at least 30 days before the agency issues the solicitation.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) A proposal to outsource having a projected cost that ranges from $1 million to $10 million in any fiscal year shall require:

(a) An initial business case analysis conducted by the state agency and submission of the business case at least 30 days before issuing a solicitation to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) A final business case analysis conducted by the state agency and submitted after the conclusion of any negotiations, at least 30 days before execution of a contract, to the council, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(3) A business case to outsource having a projected cost that is less than $1 million in any fiscal year shall require a final business case analysis conducted by the state agency after the conclusion of any negotiations and provided at least 30 days before execution of a contract to the council. The council shall provide such business cases in its annual report to the Legislature.

(4) For any proposed outsourcing, the state agency shall develop a business case that justifies the proposal to outsource. In order to reduce any administrative burden, the council may allow a state agency to submit the business case in the form required by the budget instructions issued pursuant to s. 216.023(4)(a)11., augmented with additional information if necessary, to ensure that the requirements of this section are met. The business case is not subject to challenge or protest pursuant to chapter 120. The business case must include, but need not be limited to:

(a) A detailed description of the service or activity for which the outsourcing is proposed.

(b) A description and analysis of the state agency's current performance, based on existing performance metrics if the state agency is currently performing the service or activity.

(c) The goals desired to be achieved through the proposed outsourcing and the rationale for such goals.

(d) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(e) A description of available options for achieving the goals. If state employees are currently performing the service or activity, at least one option involving maintaining state provision of the service or activity shall be included.

(f) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(g) A description of the current market for the contractual services that are under consideration for outsourcing.

(h) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost must be clearly identified in the cost-benefit analysis, described in the business case, and supported by applicable records and reports. The state agency head shall attest that, based on the data and information underlying the business case, to the best of his or her knowledge, all projected costs, savings, and benefits are valid and achievable. As used in this section, the term "cost" means the reasonable, relevant, and verifiable cost, which may include, but is not limited to, elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative. As used in this

section, the term "savings" means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the contract.

(i) A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.

(j) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(k) The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract.

(l) A plan to ensure compliance with the public records law.

(m) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(n) A state agency's transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.

(o) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

(p) A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

(5) In addition to the contract requirements provided in s. 287.058, each contract for a proposed outsourcing, pursuant to s. 287.0574, must include, but need not be limited to, the following contractual provisions:

(a) A scope-of-work provision that clearly specifies each service or deliverable to be provided, including a description of each deliverable or activity that is quantifiable, measurable, and verifiable. This provision must include a clause that states that if a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary and verified to have been performed by the agency within the 12 months before the execution of the contract, such service or deliverable will be provided by the contractor through the identified contract amendment process.

(b) A service-level agreement provision describing all services to be provided under the terms of the agreement, the state agency's service requirements and performance objectives, specific responsibilities of the state agency and the contractor, and the process for amending any portion of the service-level agreement. Each service-level agreement must contain an exclusivity clause that allows the state agency to retain the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

(c) A provision that identifies all associated costs, specific payment terms, and payment schedules, including provisions governing incentives and financial disincentives and criteria governing payment.

(d) A provision that identifies a clear and specific transition plan that will be implemented in order to complete all required activities needed to transfer the service or activity from the state agency to the contractor and operate the service or activity successfully.

(e) A performance standards provision that identifies all required performance standards, which must include, at a minimum:

1. Detailed and measurable acceptance criteria for each deliverable and service to be provided to the state agency under the terms of the contract which document the required performance level.

2. A method for monitoring and reporting progress in achieving specified performance standards and levels.

3. The sanctions or disincentives that shall be imposed for nonperformance by the contractor or state agency.

(f) A provision that requires the contractor and its subcontractors to maintain adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles.

(g) A provision that authorizes the state agency to have access to and to audit all records related to the contract and subcontracts, or any responsibilities or functions under the contract or subcontracts, for purposes of legislative oversight.

(h) A requirement for audits by a service organization in accordance with professional auditing standards, if appropriate.

(i) A provision that requires the contractor to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

(j) A contingency plan provision that describes the mechanism for continuing the operation of the service or

activity, including transferring the service or activity back to the state agency or successor contractor if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

(k) A provision that requires the contractor and its subcontractors to comply with public records laws, specifically to:

1. Keep and maintain the public records that ordinarily and necessarily would be required by the state agency in order to perform the service or activity.

2. Provide the public with access to such public records on the same terms and conditions under which the state agency would provide the records and at a cost that does not exceed that provided in chapter 119 or as otherwise provided by law.

3. Ensure that records that are exempt or confidential and exempt are not disclosed except as authorized by law.

4. Meet all requirements for retaining records and transfer to the state agency, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the state agency in a format that is compatible with the information technology systems of the state agency.

(l) A provision that addresses ownership of intellectual property. This paragraph does not provide the specific authority needed by an agency to obtain a copyright or trademark.

(m) If applicable, a provision that allows the agency to purchase from the contractor, at its depreciated value, assets used by the contractor in the performance of the contract. If

assets have not depreciated, the agency shall retain the right to negotiate to purchase at an agreed-upon cost.

Section 6. Subsection (6) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.--

(6) A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term. The provisions of this subsection are supplemental to the provisions of ss. 11.062 and 216.347 and any other law prohibiting the use of state funds for lobbying purposes.

Section 7. Section 287.074, Florida Statutes, is created to read:

287.074 Prohibited actions by contractor personnel.--

(1) Only a public officer or a public employee upon whom the public officer has delegated authority shall, consistent with law, take actions, including, but not limited to:

(a) Selecting state employees;

(b) Approving position descriptions, performance standards, or salary adjustments for state employees; and

(c) Hiring, promoting, disciplining, demoting, and dismissing a state employee.

(2) Only a public officer shall, consistent with law, commission and appoint state officers.

Section 8. A contractor, as defined in chapter 287, Florida Statutes, or its employees, agents, or subcontractors, may not knowingly participate, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or

contractual services by a state agency from an entity in which the contractor, or its employees, agents, or subcontractors, has a material interest.

Section 9. Section 14.203, Florida Statutes, is repealed.

Section 10. For the 2006-2007 fiscal year, the sum of $750,000 in recurring funds from the General Revenue Fund in a qualified expenditure category is appropriated and eight full-time equivalent positions are authorized to the Department of Management Services to carry out the activities of the Council on Efficient Government as provided in this act.

Section 11. The Department of Management Services may implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute. For the 2006-2007 fiscal year, the sum of $250,000 in recurring funds from the General Revenue Fund in a qualified expenditure category is appropriated to the Department of Management Services to implement this program. The Department of Management Services, in consultation with agencies subject to this act, shall identify personnel to participate in this training based on requested need and shall ensure that each agency requesting training is represented. The Department of Management Services may remit payment for this training on behalf of all participating personnel.

Section 12. Notwithstanding any law to the contrary, a state agency under the individual control of the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture is subject to this act.

Section 13. Paragraph (a) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(5) OTHER PERSONAL INFORMATION.--

(a)1. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes. The Legislature is also cognizant of the fact that the social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. The Legislature intends to monitor the commercial use of social security numbers held by state agencies in order to maintain a balanced public policy.

2. An agency shall not collect an individual's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented. An agency that collects social security numbers shall also segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number be more easily redacted, if required, pursuant to a public records request. An agency collecting a person's social security

number shall, upon that person's request, at the time of or prior to the actual collection of the social security number by that agency, provide that person with a statement of the purpose or purposes for which the social security number is being collected and used. Social security numbers collected by an agency shall not be used by that agency for any purpose other than the purpose stated. Social security numbers collected by an agency prior to May 13, 2002, shall be reviewed for compliance with this subparagraph. If the collection of a social security number prior to May 13, 2002, is found to be unwarranted, the agency shall immediately discontinue the collection of social security numbers for that purpose.

3. Effective October 1, 2002, all social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to all social security numbers held by an agency before, on, or after the effective date of this exemption.

4. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

5. An agency shall not deny a commercial entity engaged in the performance of a commercial activity, which, for purposes of this paragraph, means an activity that provides a product or service that is available from a private source, ~~as defined in s. 14.203~~ or its agents, employees, or contractors access to social security numbers, provided the social security numbers will be used only in the normal course of business for legitimate business purposes, and provided the commercial entity

makes a written request for social security numbers, verified as provided in s. 92.525, legibly signed by an authorized officer, employee, or agent of the commercial entity. The verified written request must contain the commercial entity's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the normal course of business for legitimate business purposes. The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 8. An agency may request any other information reasonably necessary to verify the identity of the entity requesting the social security numbers and the specific purposes for which such numbers will be used; however, an agency has no duty to inquire beyond the information contained in the verified written request. A legitimate business purpose includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.

6. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who willfully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Any public officer who violates this

paragraph is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. A commercial entity that provides access to public records containing social security numbers in accordance with this paragraph is not subject to the penalty provisions of this subparagraph.

7.a. On or after October 1, 2002, a person preparing or filing a document to be recorded in the official records by the county recorder as provided for in chapter 28 may not include any person's social security number in that document, unless otherwise expressly required by law. If a social security number is or has been included in a document presented to the county recorder for recording in the official records of the county before, on, or after October 1, 2002, it may be made available as part of the official record available for public inspection and copying.

b. Any person, or his or her attorney or legal guardian, has the right to request that a county recorder remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public by such recorder, his or her social security number contained in that official record. Such request must be made in writing, legibly signed by the requester and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. The county recorder has no duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee shall not be charged for the redaction of a social security number pursuant to such request.

c. A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post, on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

(I) On or after October 1, 2002, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

(II) Any person has a right to request a county recorder to remove, from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. No fee will be charged for the redaction of a social security number pursuant to such a request.

d. Until January 1, 2007, if a social security number, made confidential and exempt pursuant to this paragraph, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (b) is or has been included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number, or by the

holder's attorney or legal guardian, in a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court. The clerk of the circuit court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

e. Any person who prepares or files a document to be recorded in the official records by the county recorder as provided in chapter 28 may not include a person's social security number or complete bank account, debit, charge, or credit card number in that document unless otherwise expressly required by law. Until January 1, 2007, if a social security number or a complete bank account, debit, charge, or credit card number is or has been included in a document presented to the county recorder for recording in the official records of the county, such number may be made available as part of the official record available for public inspection and copying. Any person, or his or her attorney or legal guardian, may request that a county recorder remove from an image or copy of an official record placed on a county recorder's publicly available Internet website, or a publicly available Internet website used by a county recorder to display public records outside the office or otherwise made electronically available outside the county recorder's office to the general public, his or her social security number or complete account, debit, charge, or credit card number contained in that official record. Such request must be legibly written, signed by the requester, and

delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the document that contains the number to be redacted. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction. A fee may not be charged for redacting such numbers.

f. Subparagraphs 2. and 3. do not apply to the clerks of the court or the county recorder with respect to circuit court records and official records.

g. On January 1, 2007, and thereafter, the clerk of the circuit court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (b), and must keep social security numbers confidential and exempt as provided for in subparagraph 3., without any person having to request redaction.

8. Beginning January 31, 2004, and each January 31 thereafter, every agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives listing the identity of all commercial entities that have requested social security numbers during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding its need for social security numbers. If no disclosure requests were made, the agency shall so indicate.

9. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

10. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.

11. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 14. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to procurement of contractual services by a state agency; amending s. 287.057, F.S.; prohibiting a state agency from renewing or amending a contract for outsourcing under certain conditions; requiring certain qualifications for persons chosen to conduct negotiations during specified procurements; requiring the Department of Management Services to adopt rules governing those qualifications; requiring that a specified statement be included in procurements of commodities and services which prohibits contact between respondents and specified employees of the executive and legislative branches; creating s. 287.0571, F.S.; creating the Florida Efficient Government Act; providing legislative intent; providing that procurements of specified commodities and services are not subject to the act; creating s. 287.05721, F.S.; providing definitions; creating s. 287.0573, F.S.; creating the Council on Efficient Government within the Department of Management Services; providing the purpose and membership of the council; providing duties and responsibilities of the council; requiring the council to

review and issue advisory reports on certain state agency procurements; requiring the department to employ adequate number of staff; requiring the council to be headed by an executive director appointed by the Secretary of Management Services; requiring state agencies to submit materials required by the council; creating s. 287.0574, F.S.; providing requirements for certain business cases to outsource by a state agency; requiring a state agency to develop a business case that describes and analyzes a contractual services procurement under consideration; providing that the business case is not subject to challenge or protest under the Administrative Procedure Act; providing required components of a business case; providing contract requirements for a proposed outsourcing; amending s. 287.058, F.S.; providing that a contract may not prohibit a contractor from lobbying the executive or legislative branches concerning specified contract issues, within specified time lines; creating s. 287.074, F.S.; requiring that only public officers or employees shall perform certain functions; prohibiting a contractor from participating in the procurement of contractual services by a state agency; repealing s. 14.203, F.S., which creates the State Council on Competitive Government and provides duties and authority of the council; providing appropriations; providing that certain state agencies are subject to the act; amending s. 119.071, F.S.; removing a cross-reference; clarifying the meaning of "commercial activity" to conform to the removal of the reference; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. #1

Bill No. **HB 7223**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration

Representative(s) Rivera offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 119.0712, Florida Statutes, is amended to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.--

(1) DEPARTMENT OF HEALTH.--All personal identifying information~~; bank account numbers; and debit, charge, and credit card numbers~~ contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in this subsection. Information made confidential and exempt by this subsection shall be disclosed:

(a) With the express written consent of the individual or the individual's legally authorized representative.

(b) In a medical emergency, but only to the extent necessary to protect the health or life of the individual.

(c) By court order upon a showing of good cause.

(d) To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with the department, the fee provisions of which are consistent with s. 119.07(4). The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data issued pursuant to this paragraph remain the property of the department.

~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

An act relating to a review under the Open Government Sunset Review Act regarding medical records and health records; amending s. 119.0712, F.S., relating to an exemption from public records requirements for personal identifying information, bank account numbers, and debit, charge, and credit card numbers

contained in certain records held by the Department of Health which relate to an individual's personal health or eligibility for health services; removing the exemption for bank account numbers and debit, charge, and credit card numbers contained in such records; removing the schedule repeal of the exemption; providing an effective date.

State Administration Council

Friday, April 21, 2006
3:30PM – 5:30PM
17 HOB

Addendum B

Allan G. Bense
Speaker

Donald "Don" Brown
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 7121**

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative(s) Adams offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. The Legislature finds that there is a compelling need to better coordinate emergency response capabilities between local, state, federal, non-government and private sector partners to provide the best and most effective post-disaster services to the people of the State of Florida. In order to encourage the rapid recovery of economies in disaster affected areas, the Legislature finds that programs to restore normal commerce in communities should be a part of the State Comprehensive Emergency Management Plan. The Legislature recognizes non-government agencies and the private sector as key partners in disaster preparedness, response and recovery. Further, the Legislature recognizes the demonstrated abilities and contributions of these entities in successfully providing logistical support and commodities through well-proven distribution systems. In order to enhance the State Comprehensive Plan, the Division of Emergency Management within

the Department of Community Affairs is hereby directed to conduct a feasibility study on incorporating into the state's emergency management plan the logistical supply and distribution of essential commodities by non-government agencies and private entities. In conducting the study, the division shall consult with the Florida Retail Federation, the Florida Petroleum Council, the Florida Petroleum Marketers and Convenience Store Association, the Florida Emergency Preparedness Association, the American Red Cross, Volunteer Florida and other entities as appropriate. No later than February 1, 2007, the division shall make recommendations based on the study to the Governor, the Speaker of the House of Representatives and the President of the Senate.

Section 2. Section 526.143, Florida Statutes, is created to read:

526.143 Alternate generated power capacity for motor fuel dispensing facilities.--

(1) By June 1, 2007, each motor fuel terminal facility, as defined in s. 526.303(16), and each wholesaler, as defined in s. 526.303(16), which sells motor fuel in this state must be capable of operating its distribution loading racks using an alternate generated power source for a minimum of 72 hours. Pending a postdisaster examination of the equipment by the operator to determine any extenuating damage that would render it unsafe to use, the facility must have such alternate generated power source available for operation no later than 36 hours after a major disaster as defined in s. 252.34. Installation of appropriate wiring, including a transfer switch, shall be performed by a certified electrical contractor. Each business that is subject to this subsection must keep a copy of the documentation of such installation on site or at its

corporate headquarters. In addition, each business must keep a written statement attesting to the periodic testing and ensured operational capacity of the equipment. The required documents must be made available, upon request, to the Division of Emergency Management and the director of the county emergency management agency.

(2) Each newly constructed or substantially renovated motor fuel retail outlet, as defined in s. 526.303(14), for which a certificate of occupancy is issued on or after July 1, 2006, shall be prewired with an appropriate transfer switch, and capable of operating all fuel pumps, dispensing equipment, life-safety systems, and payment-acceptance equipment using an alternate generated power source. As used in this subsection, the term "substantially renovated" means a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet. Local building inspectors shall include this equipment and operations check in the normal inspection process before issuing a certificate of occupancy. Each retail outlet that is subject to this subsection must keep a copy of the certificate of occupancy on site or at its corporate headquarters. In addition, each retail outlet must keep a written statement attesting to the periodic testing of and ensured operational capability of the equipment. The required documents must be made available, upon request, to the Division of Emergency Management and the director of the county emergency management agency.

(3)(a) No later than June 1, 2007, each motor fuel retail outlet described in subparagraphs 1., 2., or 3., which is located within one-half mile proximate to an interstate highway or state or federally designated evacuation route must be prewired with an appropriate transfer switch and be capable of

operating all fuel pumps, dispensing equipment, life-safety systems, and payment-acceptance equipment using an alternate generated power source:

1. A motor fuel retail outlet located in a county having a population of 300,000 or more which has 16 or more fueling positions.

2. A motor fuel retail outlet located in a county having a population of 100,000 or more, but fewer than 300,000, which has 12 or more fueling positions.

3. A motor fuel retail outlet located in a county having a population of fewer than 100,000 which has eight or more fueling positions.

(b) Installation of appropriate wiring and transfer switches must be performed by a certified electrical contractor. Each retail outlet that is subject to this subsection must keep a copy of the documentation of such installation on site or at its corporate headquarters. In addition, each retail outlet must keep a written statement attesting to the periodic testing of and ensured operational capacity of the equipment. The required documents must be made available, upon request, to the Division of Emergency Management and the director of the county emergency management agency.

(4)(a) Subsections (2) and (3) apply to any self-service, full-service, or combination self-service and full-service motor fuel retail outlet regardless of whether the retail outlet is located on the grounds of, or is owned by, another retail business establishment that does not engage in the business of selling motor fuel.

(b) Subsections (2) and (3) do not apply to:

1. An automobile dealer;

2. A person who operates a fleet of motor vehicles;

3. A person who sells motor fuel exclusively to a fleet of motor vehicles; or

4. A motor fuel retail outlet that has a written agreement with a public hospital, in a form approved by the Division of Emergency Management, wherein the public hospital agrees to provide the motor fuel retail outlet with an alternative means of power generation onsite so that the outlet's fuel pumps may be operated in the event of a power outage.

(5)(a) Each corporation or other entity that owns 10 or more motor fuel retail outlets located within a single county shall maintain at least one portable generator that is capable of providing an alternate generated power source as required under subsection (2) for every 10 outlets. If an entity owns more than 10 outlets or a multiple of 10 outlets plus an additional six outlets, the entity must provide one additional generator to accommodate such additional outlets. Each portable generator must be stored within this state, or may be stored in another state if located within 250 miles of this state, and must be available for use in an affected location within 24 hours after a disaster.

(b) Each corporation or other entity that owns 10 or more motor fuel retail outlets located within a single domestic security region, as determined pursuant to s. 943.0312(1), and that does not own additional outlets located outside the domestic security region shall maintain a written document of agreement with one or more similarly equipped entities for the use of portable generators that may be used to meet the requirements of paragraph (a) and that are located within this state but outside the affected domestic security region. The agreement may be reciprocal, may allow for payment for services rendered by the providing entity, and must guarantee the

availability of the portable generators to an affected location within 24 hours after a disaster.

(c) For purposes of this section, ownership of a motor fuel retail outlet shall be the owner of record of the fuel storage systems operating at the location, as identified in the Department of Environmental Protection underground storage facilities registry pursuant to s. 376.303(1).

Section 3. Section 526.144, Florida Statutes, is created to read

526.144 Florida Disaster Motor Fuel Supplier Program. --

(1)(a) There is created the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs.

(b) Participation in the program shall be at the option of each county governing body. In counties choosing to participate in the program, the local emergency management agency shall be primarily responsible for administering the program within those counties. Nothing in this section shall require participation in the program.

(c) In participating counties, the Florida Disaster Motor Fuel Supplier Program shall allow any retail motor fuel outlet doing business in those counties to participate in a network of emergency responders to provide fuel supplies and services to government agencies, medical institutions and facilities, critical infrastructure, and other responders, as well as the general public, during a declared disaster as described in s. 252.36(2).

(d) Retail motor fuel outlets doing business in participating counties that choose to become members of the Florida Disaster Motor Fuel Supplier Program must be able to demonstrate the capability to provide onsite fuel dispensing services to other members of the State Emergency Response Team

within 24 hours after a major disaster has occurred, and agree to make such service available as needed. Local emergency management agencies may determine appropriate measures for determining such readiness, including acceptance of a written attestation from the retail motor fuel outlet, a copy of an executed contract for services, or other documents or activities that may demonstrate readiness. Participating retail motor fuel outlets may choose to sell motor fuel through a pre-existing contract with local, state, or federal response agencies or may provide point-of-sale service to such agencies. In addition, participating retail motor fuel outlets may choose to sell motor fuel to the general public upon compliance with requirements to provide service under ss. 252.35 and 252.38 as directed by county or state emergency management officials. Nothing in this section shall preclude any retail motor fuel outlet from selling fuel during lawful operating hours. Non-participating motor fuel retail outlets may not operate during declared curfew hours. If requested, appropriate law enforcement or security personnel may be provided through emergency management protocol to the participating business for the purpose of maintaining civil order during operating hours.

(e) Motor fuel outlets that choose to participate in the Florida Disaster Motor Fuel Supplier Program pursuant to paragraph (d) may be issued a State Emergency Response Team logo by the participating county emergency management agency for public display to alert emergency responders and the public that the business is capable of assisting in an emergency.

(f) Counties that choose to participate in the Florida Disaster Motor Fuel Supplier Program may charge a fee to cover the actual costs of accepting a retail motor fuel outlet into the program, including the cost of performing any required

review, filing of necessary forms, and producing logo decals for public display. Additional charges may not be imposed for processing individual documents associated with the program. Funds collected shall be deposited into an appropriate county operating account.

(3) Persons who are designated as members of the State Emergency Response Team and who can produce appropriate identification, as determined by state or county emergency management officials, shall be given priority for purchasing fuel at businesses designated as members of the State Emergency Response Team. A business may be directed by county or state emergency management officials to remain open during a declared curfew in order to provide service for emergency personnel. Under such direction, the business is not in violation of the curfew and may not be penalized for such operation and the emergency personnel are not in violation of the curfew. A person traveling during a curfew must be able to produce valid official documentation of his or her position with the State Emergency Response Team or the local emergency management agency. Such documentation may include, but need not be limited to, current SERT identification badge, current law enforcement or other response agency identification or shield, current health care employee identification card, or current government services identification card indicating a critical services position.

(4) A business that is designated as a member of the State Emergency Response Team may request priority in receiving a resupply of fuel in order to continue service to emergency responders. Such request is not binding, but shall be considered by emergency management officials in determining appropriate response actions.

(5) Notwithstanding any other law or local ordinance and for the purpose of ensuring an appropriate emergency management response following major disasters in this state, the regulation, siting, and placement of alternate power source capabilities and equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets are preempted to the state.

(6) The Energy Office of the Department of Environmental Protection shall review situational progress in post-disaster motor fuel supply distribution and provide a report to the Legislature by March 1, 2007. The report must include information concerning statewide compliance with s. 526.143, Florida Statutes, and an identification of all motor fuel retail outlets that are participating in the Florida Disaster Motor Fuel Supplier Program.

Section 4. Subsection (2) of section 501.160, Florida Statutes, is amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.--

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition is effective not to exceed 60 days under the initial declared state of emergency as defined in s. 252.36(2,)F.S. and shall be

renewed by statement in any subsequent renewals of the declared state of emergency by the Governor.

Section 5. Section 553.509, Florida Statutes, is amended to read:

553.509 Vertical accessibility.--Nothing in sections 553.501-553.513 or the guidelines shall be construed to relieve the owner of any building, structure, or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupied grade level, regardless of whether the guidelines require an elevator to be installed in such building, structure, or facility, except for the areas, rooms, and spaces described in subsections (1), (2), and (3):

(1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.;

(2) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.; and

(3) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.

(4)(a) Any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, shall have at least one public elevator that is capable of operating on an alternate power source for emergency purposes. Alternate power shall be available for the purpose of allowing all residents access for a specified number of hours each day over a

5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must also be capable of powering any connected fire alarm system in the building.

(b) At a minimum, the elevator must be appropriately pre-wired and prepared to accept an alternate power source and must have a connection on the line side of the main disconnect, pursuant to National Electric Code Handbook, Article 700. In addition to the required power source for the elevator and connected fire alarm system in the building, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Residential multifamily dwellings must have an available generator and fuel source on the property or have proof of a current contract posted in the elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed service contract for such equipment and fuel source to operate the elevator on an on-call basis within 24 hours after a request. By December 31, 2006, any person, firm or corporation that owns, manages or operates a residential multifamily dwelling as defined in (4)(a) must provide to the local building inspection agency verification of engineering plans for residential multifamily dwellings that provide for the capability to generate power by alternate means . Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management agency by December 31, 2007.

(c) Each newly constructed residential multifamily dwelling, including a condominium, that is at least 75 feet high

and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, must have at least one public elevator that is capable of operating on an alternate power source for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must be capable of powering any connected fire alarm system in the building. In addition to the required power source for the elevator and connected fire alarm system, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Engineering plans and verification of operational capability must be provided by the local building inspector to the county emergency management agency before occupancy of the newly constructed building.

(d) Each person, firm, or corporation that is required to maintain an alternate power source under this subsection shall maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a life safety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents. In addition, the owner, manager, or operator of the residential multifamily dwelling must keep written records of any contracts for alternative power generation equipment. Also, quarterly inspection records of life safety equipment and alternate power generation equipment must be posted in the elevator machine room

or other place conspicuous to the elevator inspector, which confirm that such equipment is properly maintained and in good working condition, and copies of contracts for alternate power generation equipment shall be maintained on site for verification. The written emergency operations plan and inspection records shall also be open for periodic inspection by local and state government agencies as deemed necessary. The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.

(e) Multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with this subsection. If an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.

(f) As a part of the annual elevator inspection required under s. 399.061, certified elevator inspectors shall confirm that all installed generators required by this chapter are in working order, have current inspection records posted in the elevator machine room or other place conspicuous to the elevator inspector, and that the required generator key is present in the lockbox posted at or near the installed generator. If a building

does not have an installed generator, the inspector shall confirm that the appropriate pre-wiring and switching capabilities are present and that a statement is posted in the elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed contract exists for contingent services for alternate power is current for the operating period.

However, buildings, structures, and facilities must, as a minimum, comply with the requirements in the Americans with Disabilities Act Accessibility Guidelines.

Section 6. Paragraph (i) of subsection (2) of section 252.35, Florida Statutes, is amended to read, and paragraphs (j)(s), and (t) of subsection (2) of section 252.35, Florida Statutes, are created to read:

252.35 Emergency management powers; Division of Emergency Management.--

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties under ss. 252.31-252.90, the division shall:

(i) Institute statewide public awareness programs. This shall include an intensive public educational campaign on emergency preparedness issues, including, but not limited to, the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. The public educational campaign shall include relevant information on statewide disaster plans, evacuation routes, fuel suppliers, and shelters. All educational materials must be available in alternative formats and mediums to ensure that they are available to persons with disabilities.

(j) The Division of Emergency Management and the Department of Education shall coordinate with the Agency For Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria.

(s) By January 1, 2007, the Division of Emergency Management shall complete an inventory of portable generators owned by the state and local governments which are capable of operating during a major disaster. The inventory must identify, at a minimum, the location of each generator, the number of generators stored at each specific location, the agency to which each the generator belongs, the primary use of the generator by the owner agency, and the names, addresses, and telephone numbers of persons having the authority to loan the stored generators as authorized by the Division of Emergency Management during a declared emergency.

(t) The division shall maintain an inventory list of generators owned by the state and local governments. In addition, the division may keep a list of private entities, along with appropriate contact information, which offer generators for sale or lease. The list of private entities shall be available to the public for inspection in written and electronic formats.

Section 7. The Legislature finds that county emergency operations centers should meet the minimum criteria for structural survivability and sufficiency of operational space, as determined by assessments performed by the Department of Community Affairs based on guidance from the Federal Emergency Management Agency. Criteria for a county emergency operations

center include, but are not limited to, county population, hurricane evacuation clearance time for the vulnerable population of the county, structural survivability of the existing emergency operations center, and FEMA guidance for workspace requirements for the emergency operations center. First priority for funding shall be for county emergency operations centers where no survivable facility exists and where workspace deficits exist. Funding may not be used for land acquisition or recurring expenditures. Funding is limited to the construction or structural renovation of the county emergency operations center in order to meet national workspace recommendations and may not be used to purchase equipment, furnishings, communications, or operational systems. There is hereby appropriated $20 million from non-recurring General Revenue and $8.6 million from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay to establish a competitive award process to implement this section. No more than 5% of the funds provided under this section may be used by the Department for administration of the funding.

Section 8. Appropriated funds may be used for increasing storage capacity; improving technologies to manage commodities; and enhancing the ability to maintain in a safe and secure manner an inventory of supplies, equipment, and commodities that would be needed in the immediate aftermath of a disaster. There is hereby appropriated $400,000 from nonrecurring General Revenue, $1.6 million from recurring Emergency Management, Preparedness and Assistance Trust Fund, and $4.5 million from nonrecurring Emergency Management Preparedness and Assistance Trust Fund to the Department of Community Affairs for logistical improvements and technology.

Section 9. Appropriated funds may be used to update hurricane evacuation plans using Light Detecting and Ranging technology and the National Hurricane Center's computerized Sea, Lake and Overland Surges for Hurricanes model. There is hereby appropriated $29 million from the U.S. Contributions Trust Fund to the Department of Community Affairs to update regional hurricane evacuation plans using Light Detecting and Ranging Technology and the National Hurricane Center computerized Sea, Lake and Overland Surges for Hurricanes model. No more than 5% of the funds provided under this section may be used by the Department for administration of this funding.

Section 10. There is hereby appropriated $76,150 nonrecurring General Revenue to the Department of Community Affairs for a study on the feasibility of incorporating non-government agencies and private entities into the logistical supply and distribution system for essential commodities.

Section 11. 4 million from the U.S. Contributions Trust Fund to the Department of Community Affairs for the Division of Emergency Management's public awareness campaign.

Section 12. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

An act relating to disaster preparedness response and recovery; directing the Division of Emergency Management to conduct a

feasibility study relating to the supply and distribution of essential commodities by non-government and private entities; on creating s. 526.143, F.S.; providing that each motor fuel terminal facility and wholesaler that sells motor fuel in the state must be capable of operating its distribution loading racks using an alternate power source for a specified period by a certain date; providing requirements with respect to the operation of such equipment following a major disaster; providing requirements with respect to inspection of such equipment; requiring newly constructed or substantially renovated motor fuel retail outlets to be capable of operation using an alternate power source; defining "substantially renovated"; requiring certain motor fuel retail outlets located within a specified distance from an interstate highway or state or federally designated evacuation route to be capable of operation using an alternate power source by a specified date; providing inspection and recordkeeping requirements; providing applicability; creating s. 526.144, F.S.; creating the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs; providing requirements for participation in the program; providing that participation in the program shall be at the option of each county; providing for administration of the program; providing requirements of businesses certified as State Emergency Response Team members; providing for preemption to the state of the regulation of and requirements for siting and placement of an alternate power source and any related equipment at motor fuel terminal facilities, wholesalers, and retail sales outlets; providing for review of the program; providing a report; amending s. 501.160, F.S., providing limiting price gouge prohibition periods; providing prohibition period renewal; amending s. 553.509, F.S., relating to

requirements with respect to vertical accessibility under pt. II of ch. 553, F.S., the "Florida Americans With Disabilities Accessibility Implementation Act"; requiring specified existing and newly constructed residential multifamily dwellings to have at least one public elevator that is capable of operating on an alternate power source for emergency purposes; providing requirements with respect to the alternate power source; providing for verification of compliance by specified dates; providing requirements with respect to emergency operations plans and inspection records; requiring any person, firm, or corporation that owns, manages or operates specified multistory affordable residential dwellings to attempt to obtain grant funding to comply with the act; requiring an owner, manager or operator of such a dwelling to develop an evacuation plan in the absence of compliance with the act; providing additional inspection requirements under ch. 399, F.S., the "Elevator Safety Act"; amending s. 252.35, F.S.; expanding the duty of the Division of Emergency Management to conduct a public educational campaign on emergency preparedness issues; expanding the duty of the Division of Emergency Management to create and maintain lists of emergency generator; providing an additional duty of the division with respect to educational outreach concerning disaster preparedness; providing legislative findings with respect to minimum criteria for county emergency operations centers; specifying criteria for county emergency operations centers; providing priority and restrictions for funding; providing an appropriation to the Department of Community Affairs to establish a competitive award process; providing legislative findings with respect to improved logistical staging and warehouse capacity for commodities; providing uses of appropriated funds; providing an appropriation to the Department

of Community Affairs for logistical improvements and technology; providing legislative findings with respect to hurricane evacuation recommendations; providing for use of appropriated funds; providing an appropriation to the Department of Community Affairs to update regional hurricane evacuation plans; providing an appropriation to the Department of Community Affairs to conduct a feasibility study; providing an appropriation to the Department of Community Affairs for the Division of Emergency Management's public awareness campaign; providing severability; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 7221

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Administration Council

Representative Reagan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) of section 106.011, Florida Statutes, is amended to read:

106.011 Definitions.--As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1)

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04, national political parties, and the state and county executive committees of political parties regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political

activities are limited to contributions to candidates, political parties, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Organizations whose activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications; however, such organizations shall be required to register and report contributions, including those received from committees of continuous existence, and expenditures in the same manner, at the same time, subject to the same penalties, and with the same filing officer as a political committee supporting or opposing a candidate or issue contained in the electioneering communication, provided, however, that the registration, if not previously filed, and initial report of such organization shall be filed within 48 hours after receiving access to the Division's electronic filing system, and shall include all contributions received and expenditures made since the date of the last general election. The organization shall request an identification number and initial password to gain access to the system within one business day of making an expenditure for an electioneering communication. If any such organization would be required to register and report with more than one filing officer, the organization shall register and report solely with the Division of Elections.

Section 2. Paragraph (c) of subsection (4) of section 106.04, Florida Statutes, is amended to read:

106.04 Committees of continuous existence.--

(4)(c) All committees of continuous existence shall file ~~the original and one copy of~~ their reports with the Division of

Elections. ~~In addition, a duplicate copy of each report shall be filed with the supervisor of elections in the county in which the committee maintains its books and records, except that if the filing officer to whom the committee is required to report is located in the same county as the supervisor no such duplicate report is required to be filed with the supervisor.~~ Reports shall be filed in accordance with s. 106.0705 ~~on forms provided by the division~~ and shall contain the following information:

1. The full name, address, and occupation of each person who has made one or more contributions, including contributions that represent the payment of membership dues, to the committee during the reporting period, together with the amounts and dates of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less, the occupation of the contributor or principal type of business need not be listed. However, for any contributions that represent the payment of dues by members in a fixed amount aggregating no more than $250 per calendar year, pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

2. The name and address of each political committee or committee of continuous existence from which the reporting committee received, or the name and address of each political committee, committee of continuous existence, or political party to which it made, any transfer of funds, together with the amounts and dates of all transfers.

3. Any other receipt of funds not listed pursuant to subparagraph 1. or subparagraph 2., including the sources and amounts of all such funds.

4. The name and address of, and office sought by, each candidate to whom the committee has made a contribution during the reporting period, together with the amount and date of each contribution.

5. The full name and address of each person to whom expenditures have been made by or on behalf of the committee within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address, and office sought by, each candidate on whose behalf such expenditure was made.

6. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses has been made, including the full name and address of each entity to whom the person made payment for which reimbursement was made by check drawn upon the committee account, together with the amount and purpose of such payment.

7. Transaction information from each credit card statement which shall be included in the next report following receipt thereof by the committee. Receipts for each credit card purchase shall be retained by the treasurer with the records for the committee account.

8. ~~6.~~ The total sum of expenditures made by the committee during the reporting period.

Section 3. Paragraph (a) of subsection (4) of section 106.07, Florida Statutes, is amended to read:

106.07 Reports; certification and filing.--

(4)(a) Each report required by this section shall contain:

1. The full name, address, and occupation, if any of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.

5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of,

and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually.

8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

11. A copy of each credit card statement which shall be included in the next report following receipt thereof by the candidate or political committee. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or

procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

14. For any contribution received by a person that has made or makes an expenditure for an electioneering communication from an entity organized under sec. 527 of the Internal Revenue Code that is not currently registered with or reporting to the Division of Elections, the following additional information on its next required report following receipt of such contribution:

a. The name, address and contact person of the s. 527 entity.

b. The date the s. 527 entity was formed.

c. A list of all contributions that exceed $10,000 received by the s. 527 entity since the date of the last general election, and the name and address of each contributor, including each single contributor that in the aggregate made contributions exceeding $10,000 during the period.

Failure to completely report such information by a person shall require a refund of such contribution to the entity.

Section 4. Section 106.0701, Florida Statutes, is created to read:

106.0701 Solicitation of contributions and disclosure; registration.--

(1)(a) The Governor, Lieutenant Governor, members of the Cabinet, state legislators, or candidates for such offices who directly or indirectly solicit, cause to be solicited or accept any contribution on behalf of an organization that is exempt from taxation under s. 527 or s. 501(c)(4) of the Internal

Revenue Code which such persons, in whole or in part, establish, maintain or control, shall immediately file a statement with the Division of Elections. Such statement shall contain the following information:

1. The name of the person acting on behalf of an organization.

2. The name and type of organization.

3. A description of the relationship between the person and the organization.

(b) Upon registration with the Division of Elections, a person subject to the requirements of paragraph (a) shall promptly create a public website that contains a mission statement and the names of persons associated with the organization. The address of the website shall be reported to the Division of Elections within 5 business days of being created.

(c) All contributions received shall be disclosed on the website within 5 business days after deposit, together with the name, address and occupation of the donor. All expenditures by the organization shall be individually disclosed on the website within 5 business days after being made.

(2) The requirements of subsection (1) do not apply to a person acting on behalf of his or her own campaign or a political party of which the person is a member.

Section 4. This act shall take effect on July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove line 7 and insert:

electioneering communications; amending s. 106.04, F.S.; providing certain filing requirements and additional reporting

requirements for committees of continuous existence; amending s. 106.07, F.S.;